

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14573 of 2016

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Anil Kumar aged about 42 years S/o Sri Bindeshwari Prasad, resident of Village-Jhagribigha, P.S.- Sirdalla, District- Nawada.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Patna.
2. The Principal Secretary, Department of Home (Police), Patna.
3. The Inspector General (Prisons & Correctional Services), Bihar, Patna.
4. The Joint Secretary Cum Director Administration (Prisons & Correctional Services), Bihar, Patna.
5. The Superintendent, Mandal Kara, Ara.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Adv.

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-07-2018

Heard Mr. Krishna Chandra, learned counsel appearing for the petitioner and Mr. Saroj Kumar Sharma, learned AC to AAG-3, for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The writ petition is filed with the prayer for quashing an order bearing Memo No. 3603 dated 15.6.2016 passed by the Inspector General, Prisons and Reforms Services, Bihar, Patna whereby the petitioner has been dismissed from service. The petitioner also questions the appellate order bearing Memo No. 4298 dated 20.7.2016 passed by the Principal Secretary, Home (Police)



Department, Patna whereby the appeal has been dismissed. Copies of the dismissal order and the appellate order are impugned at Annexures 11 and 13 respectively to the writ petition.

The charge memo is enclosed at Annexure-6 and substantially alleges the petitioner of taking supplies from a person who is other than to whom, work order was issued. In short, while according to the department it is one Sumesh Kumar, who was given the work order of supplies to the jail in question, the petitioner has been obtaining supplies from one Ajay Kumar Singh. The reasons why the petitioner did so can be found in his reply at Annexure-8 in which it is stated that since the supplier Sumesh Kumar failed to deposit guarantee money that exercising wisdom he has obtained supplies from the other gentleman. It is taking this Court through the charges and the reply filed by the petitioner thereto that Mr. Chandra argued that in absence of any allegation of embezzlement, a mere discretion exercised by the petitioner to take supplies from a person other than the one to whom work order was issued, in view of the explanation given by him, suffers no infirmity to warrant an extreme penalty of dismissal.

The second argument advanced by Mr.Chandra is that even if the allegation is accepted on its face value, it would yet not amount to misconduct even if an irregularity.



The third argument advanced by Mr. Chandra is that no evidence either oral or documentary was led during the enquiry nor even the complainant was led as evidence by the Presenting Officer.

The submissions advanced by Mr. Chandra stands noted in the order of this Court dated 18.06.2018 and for the sake of convenience is reproduced hereinbelow:

- (a) Even if the charges which are 10 in number are taken on its face value yet no misconduct is made out for there is no charge of financial misappropriation on the petitioner;
- (b) May be, the petitioner has during the course of probation not followed the procedure but the explanation given by the petitioner to such procedural fault does not constitute a misconduct;
- (c) Although the proceeding was initiated under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Disciplinary Rules') but the procedure mandated under rules 17 and 18 of the 'Disciplinary Rules' was never followed for neither any oral evidence was led against the petitioner in support of the allegation nor the documentary evidence relied upon in the charge memo was proved by any witness rather it is simply on the allegation and taking



note of the rebuttal of the petitioner that the Enquiry Officer has upheld the guilt in some of the cases while holding some of them partially proved and the Disciplinary Authority in a mechanical manner has upheld the charges by one paragraph conclusion which does not qualify for an order of quasi-judicial authority.

- (d) He further submits that the order of dismissal as affirmed by the Appellate Authority is non-speaking and no reason has been assigned by the authorities to reject the plea of the petitioner.”

Since the argument advanced entirely rested on the records of the disciplinary proceeding that learned State Counsel was directed to produce the same and following which Mr. Sharma with the aid of records has argued that the allegations were serious against the petitioner because he was obtaining supplies from a supplier other than one to whom a work order was issued. On query made from Mr. Sharma as to the evidence led by the Presenting Officer in support of the accusation and whether the supplier Sumesh Kumar was led in evidence, the answer is in negative. The argument of Mr. Chandra that no evidence either oral or documentary was led in the enquiry stands confirmed, yet in a whimsical manner, a penalty of dismissal has been



ordered and mechanically has been confirmed by the appellate authority.

In my opinion, it is not every allegation which can be held misconduct unless it is backed by motivated action or is resting on pecuniary gain or has been done in absolute violation of the Departmental Rules/Instructions, none of which is present nor placed on record. A decision was taken by the petitioner to obtain supplies from a person other than the supplier and he has given his reasons for such decision which may not be absolutely in tune with the requirement, nonetheless in absence of any evidence that such decision was backed by the motivated action, it certainly would not constitute a misconduct to invite the penalty of dismissal. That no evidence either oral or documentary was led to establish the charge whatsoever, is another perpetuation of illegality. The disciplinary proceeding has been held in absolute casual manner, dehors the provisions underlying the Bihar Government Service (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') as amended from time to time which casts obligation on the Presenting Officer to support the charge by leading evidence yet, not only the Enquiry Officer but even the Disciplinary Authority and the Appellate Authority have got swayed by the allegation to impose an extreme penalty of dismissal. That no



evidence was led in the proceeding to support the charges, are sufficient to hold the order of dismissal dated 15.06.2016 as affirmed by the Appellate Authority vide order dated 20.07.2016 illegal, based on no evidence and passed dehors the provisions of ‘the Disciplinary Rules’, in a mechanical manner.

In the circumstances discussed, the issues raised by Mr. Chandra to question the impugned orders, are well taken and upheld.

In result, the dismissal order passed vide memo no. 3603 dated 15.06.2016 impugned at Annexure-11 together with appellate order bearing memo no. 4298 dated 20.07.2016 impugned at Annexure-13 can not be upheld and are accordingly quashed and set aside. The petitioner stands reinstated and would be entitled to full back wages with all consequential benefits.

The writ petition is allowed.

(Jyoti Saran, J)

Archana/ Surendra

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.07.2018
Transmission Date	NA

