

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.860 of 2017**

**IN**

**Civil Writ Jurisdiction Case No. 315 of 2016**

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1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Principal Secretary-Cum-Departmental Enquiry Commissioner, Mines and Minerals, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Additional Secretary, General Administration Department, Govt. Bihar, Patna.

.... .... Respondents/ Appellants

Versus

1. Devendra Kumar Savita, Son of Late N.K. Thakur, Resident of Mohalla - Nehru Nagar, Quarter No. 54, Police Station - Patliputra, District - Patna.

.... .... Petitioner/Respondent

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**Appearance :**

For the Appellants : Mr. Ajay Kr. Rastogi, AAG-12

For the Respondent : Mr. Ravi Ranjan, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

ORAL JUDGMENT & ORDER

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date: 26-09-2018**

We have heard the learned counsel appearing on  
behalf of the respective parties.



2. The appellants-State has put up a challenge to the judgment and order dated 31.01.2017, passed by a learned Single Judge of this Court in C.W.J.C. No. 315 of 2016, whereby the order contained in Resolution/Memo No. 18007 dated 31.12.2015, passed by the appellant No. 4 herein (the Additional Secretary, General Administration Department, Govt. of Bihar, Patna), reverting the sole respondent (petitioner in C.W.J.C. No. 315 of 2016) from the post of Deputy Secretary (Pay Band-3, Grade Pay-Rs.6600/- to the basic grade in the Bihar Administrative Service in Pay Band-3, Grade Pay-Rs. 5400/-) has been set aside and all other consequential benefits have been directed to be given to him.

3. During the period when the respondent/petitioner was posted as Deputy Collector Land Reforms, Sadar Chapra and was also handling the additional charge of Executive Officer, Chapra Nagar Parishad, an F.I.R. came to be registered against him for committing major financial irregularities in various developmental Schemes of the Government.

4. A request was made by the District Magistrate, Chapra to accord sanction for prosecuting the respondent/petitioner, which, according to the appellants-State, was granted on 20.02.2013, but the same was



managed to be kept away from the concerned file of the respondent/petitioner. In the meantime, a meeting of the DPC was held on 30.10.2012 and the respondent/petitioner was considered for promotion. Since there was no sanction order for prosecuting the respondent/petitioner available in the file, he was promoted and the notification of the promotion was also issued on 25.03.2013.

5. It has been contended on behalf of the appellants-State that the file relating to the respondent/petitioner was again sent to the Law Department for obtaining sanction to prosecute and then it was found that the respondent/petitioner had manipulated and tampered with the file with the connivance of others, as it would have given him a definite advantage in the matter of promotion.

6. A departmental proceeding, thereafter, was initiated against the respondent/petitioner and he was held guilty of the charge. A second show-cause notice was also issued to the respondent/petitioner, which was responded by him. In the aforesaid departmental proceeding, the Disciplinary Authority took a decision of reducing the rank of the respondent from Deputy Secretary to one of the basic grade in Bihar Administrative Service, which had the concurrence of Bihar Public Service Commission as well.

7. The aforesaid order (contained in Annexure-11



to the writ-petition) was challenged by the respondent/petitioner on various grounds.

8. The learned Single Judge, on an examination of the relevant materials, found that even though an F.I.R. had been registered against the respondent/petitioner in the year 2008, no charge-sheet had been submitted and that when DPC was held after about four years of the lodging of the F.I.R., the respondent was found suitable for promotion and was accordingly promoted to the post of Additional Collector on 25.03.2013.

9. The memo of charge in the departmental proceeding clearly indicated that the file relating to the sanction of prosecution against the respondent/petitioner was tampered with by the Dealing Assistant, Vinay Kumar and the Section Officer, Satrugan Jha and there was nothing specific against the respondent/petitioner. He was sought to be proceeded against on the presumption that the interpolation/tampering of the file directly benefited the respondent/petitioner and, therefore, he was responsible for the same.

10. Finding the charges to be vague; there being no direct evidence of complicity of the respondent/petitioner in interpolating the file in question and that neither charge-sheet was submitted in the F.I.R. lodged against him nor the



charge memo had been finalized till the time when the he was considered for promotion by the DPC, the learned Single Judge was of the view that the very initiation of proceeding against the respondent/petitioner was without any basis/substance.

11. True it is that the F.I.R. was registered against the respondent/petitioner, but mere registration of the F.I.R. would not lead to any consequence unless charge-sheet is submitted; thereby concluding that *prima facie* the respondent/petitioner was found to be guilty for misappropriation of Government funds. In the absence of any such police report or any memo of charge in the departmental proceeding, there would have been no reason for the DPC not to have considered the suitability of the respondent/petitioner for being promoted to a higher post.

12. Merely because the sanction order against the respondent/petitioner was not found in the concerned file, one cannot jump to the conclusion that the respondent/petitioner was responsible for such tampering of the concerned file. A thorough enquiry also revealed that the Dealing Assistant as well as the Section Officer were responsible for tampering with the concerned file. Even if the sanction order would have been available in the file in question, the case of the respondent/petitioner would surely



have been considered by the DPC for promotion as by the time the DPC was held, admittedly, no charge memo in the departmental proceeding had been served upon the respondent/petitioner.

13. The charge memo also appears to be rather vague in as much as the accusation is only on the basis of the respondent/petitioner being the beneficiary of the non-availability of relevant sanction order in the file. This, in our opinion, is a vague charge.

14. For the aforesaid reason, we feel that the learned Single Judge has rightly adjudicated that there was no proper application of mind by the Enquiry Officer or the Disciplinary Authority. We have no reasons, therefore, to differ with the views and findings of the learned Single Judge.

15. The present Letters Patent Appeal is, accordingly, dismissed.

16. Cost easy.

**(Mukesh R. Shah, CJ)**

**(Ashutosh Kumar, J)**

**Praveen-II/-**

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