

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7205 of 2019

Jay Chandra Prasad, son of Late Chirkut Ram, resident of Village- Sakaddi,
Police Station- Koelwar, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Planning and Development Department, Govt. of Bihar, Patna.
2. The Secretary, Planning and Development Department Govt. of Bihar, Patna.
3. The Director, Economics and Statistics Directorate (Planning and Development Department) Govt. of Bihar, Patna.
4. The District Magistrate Rohtas at Sasaram.
5. The District Statistical Officer Rohtas at Sasaram.
6. The Block Development Officer, Ramgarh Kaimur at Bhabhua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vindayachal Singh, Advocate
For the State	:	Mr. Deepak Sahay Jamuar, AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 17-06-2019

Heard Mr. Vindayachal Singh, learned
advocate for the petitioner and Mr. Deepak Sahay
Jamuar, learned AC to AAG-4.

2. The petitioner, who is a Block Statistical
Supervisor, Dinara at Rohtas and who was deputed as
In-charge, Purchase Centre, Belwaiya, State Food



Corporation has challenged the order dated 08.01.2018 issued under the signature of the Director, Economics & Statistics Directorate (Planning and Development Department), Government of Bihar, Patna whereby he has been subjected to a punishment of withholding of three annual increments with cumulative effect; as also the order dated 28.09.2018 contained in Memo No. 341 issued under the signature of the Secretary, Planning and Development Department, Government of Bihar, Patna, dismissing the appeal of the petitioner against the order of the Disciplinary Authority.

3. It appears that while discharging his duties as In-charge of the Purchase Centre, Belwaiya, the petitioner, in accordance with the mandate of his job, had purchased wheat and had transferred the same to the godown of the State Warehousing Corporation through the logistics provided by the District Manager, State Food Corporation. The transportation was effected through 128 trucks, for which the petitioner had definite



evidence in his possession. On 04.11.2013, the petitioner was surprised to receive a notice from the District Manager, State Food Corporation, Rohtas at Sasaram directing him to deposit approximately rupees nineteen lakhs because of detection of short supply of wheat by 1283.90 quintals because according to the District Manager, State Food Corporation, out of total purchase of 31369.75 quintals of wheat from the farmers through the agency of PACS, only 30085.85 quintals of wheat was supplied in the depot of Bihar State Warehousing Corporation. Another notice followed the aforesaid notice directing the petitioner to deposit an amount of Rs. 18,30,892.75 which was the cost of 1426.04 quintals of wheat. Later, an explanation also was sought from the petitioner regarding shortage of the aforesaid quantity of wheat from the godown of the Purchase Centre of which the petitioner was the In-charge. The petitioner was also communicated through a notice that out of the wheat which was sent by the



petitioner to the depot of Warehousing Corporation, approximately 1425 quintals of wheat was rejected and therefore such quantity of wheat was sent back to the purchase centre, for it to be stored in the godown attached to the centre. When the said wheat was auction sold, the auction purchaser could not lift the same from the godown as such amount of wheat was found to be non-existent. It was therefore sought to be known from the petitioner as to what happened to the aforesaid quantity of wheat and why a criminal case be not lodged against the petitioner simultaneously with a departmental proceeding against him.

4. The petitioner appears to have replied to the aforesaid notice but was subjected to the departmental proceeding. The charges against the petitioner were substantially the same viz. the relevant quantity of wheat viz. 1425 quintals not being found in the godown of the Purchase Centre and when the same was auction- sold, the auction purchaser could not lift



the same.

5. The explanation of the petitioner in the departmental proceeding regarding such non-existence of the wheat in question was that the petitioner in his capacity as In-charge of the Purchase Centre was only concerned with the purchase and transportation of the wheat to the depot of the State Warehousing Corporation.

6. In the departmental proceeding, but for one receipt viz. receipt No. 124, the petitioner furnished all the copies of the receipts which were countersigned by the transporter/driver/cleaner of various trucks, which wheat was correspondingly entered in the depot of the State Warehousing Corporation. The explanation, thereafter, of the petitioner in the departmental proceeding was that after having dispatched the purchased/procured wheat, the job of the petitioner was over and he was not at all concerned with the management of the godown attached to the Purchase



Centre.

7. Mr. Vindyachal Singh, learned advocate for the petitioner has shown to this Court the office memo contained in Annexure-1 to the writ petition which delineates the manifest of the duties of various functionaries of the purchase centre. At every purchase centre, a person is made an In-charge along with an export and *Kishan Salahkaar*. Apart from the aforesaid officers, other officers viz Executive Assistant, Accountant, Godown In-charge were also placed at every purchase centre.

8. Thus, what has been canvassed before this Court is that the petitioner had definite explanation of having sent the entire procured wheat to be deposited in the State Warehousing Corporation and whereafter the job of the petitioner was over so far as such procured wheat was concerned.

9. The other limb of argument of Mr. Singh, learned advocate is that in the absence of any evidence



before the Disciplinary Authority of certain amount of wheat dispatched by the petitioner having been rejected and sent back for storage in the godown attached with the purchase centre and further evidence of the same having been sold after physical verification of the existence of such wheat in the godown of the Purchase Centre, the petitioner could not have been made liable and could have been saddled with the responsibility of such quantity of wheat.

10. The learned advocate for the petitioner has drawn the attention of this Court to the Inquiry Report which also admits the fact that most of the procured wheat was dispatched by the petitioner but one receipt viz. receipt No. 124 was not available on record.

11. However, apart from that, it has also been found by the Inquiry Officer that there was no evidence with respect to the storage of 1425 quintals of wheat in the godown of the Purchase Centre of which the petitioner was the In-charge.



12. Under such circumstances, the Inquiry Officer was of the view that necessary evidence was required for saddling the petitioner with the responsibility of such wheat.

13. It was thus argued on behalf of the petitioner that the departmental proceeding was not conducted in the manner in which it ought to have been conducted. No evidence was adduced on behalf of the Department to prove basic facts viz. rejection/return of 1425 quintals of wheat of the State Warehousing Corporation and the same having been received in the godown of the purchase centre. There is also no evidence, it has been asserted by the learned advocate for the petitioner of any certificate or authorization by the petitioner before putting such wheat to auction sale. There is no evidence adduced on behalf of the department that with respect to the aforesaid quantity of wheat which was allegedly rejected by the State Warehousing Corporation, any auction proceeding was



held; when was the same held and when the auction purchaser came to the godown for lifting the same only to find the godown vacant. These aspects have not been proved by evidence.

14. Under the aforesaid circumstances, it has been urged that the Disciplinary Authority ought not to have found the petitioner guilty and subjected him to the punishment of withholding of three increments of pay and recovery of the amount of 1425 quintals of wheat.

15. In the same breath and with considerable strength, learned advocate for the petitioner has castigated the order passed in appeal which only reproduces the logic and the conclusion arrived at by the Disciplinary Authority.

16. As opposed to the aforesaid contentions raised on behalf of the petitioner, learned advocate for the State has submitted that all the impedimenta of the disciplinary proceeding has been followed viz. notice to the petitioner, seeking explanation from him, framing of



charges with specific and distinct allegation which stood proved in the departmental proceeding.

17. It has further been submitted on behalf of the State that the decision of the Disciplinary Authority on the evidence on record fully justified the conclusion arrived at by the disciplinary authority and therefore there is no occasion for this Court to delve into the matter any further. Since the order passed by the Disciplinary Authority is sufficient so far as evidence and conclusions are concerned, no fault could be found with the appellate order as well, which though short and discursive, does not warrant any interference.

18. The contentions of the learned advocate for the State is not at all acceptable to this Court for the following reasons: (a) in the departmental proceeding, no evidence has been adduced with respect to rejection of 1425 quintals of wheat; (b) how the aforesaid quantity of wheat was sent back to the purchase centre has not been demonstrated; (c) there is no evidence on



record to indicate that it was part of the duties of the In-charge of the purchase centre to maintain the godown or the foodgrains stored in such godown; (d) whether such rejected wheat was entrusted to the petitioner also remains in the realm of doubt; (e) what process was adopted before subjecting such wheat to auction sale and when was such auction proceeding conducted; (f) who was the auction purchaser and when did he come to the Purchase Centre godown for lifting the auctioned wheat; (g) whether any certification of the petitioner or for that matter godown In-charge was taken regarding physical existence of the foodgrains in question before conducting the auction proceeding regarding the same; (h) in the absence of any cogent explanation or evidence in that regard, it does not appear to be justifiable to saddle such loss of foodgrains on the petitioner so as to warrant a direction for recovery of the aforesaid amount of such foodgrains from the petitioner.

19. The disciplinary proceeding therefore



appears to have been conducted without taking proper and necessary recourse to adducing relevant evidence. The manner of the proceeding is not at all in consonance with the provision contained in Bihar Civil Services (Classification Control & Appeal) Rules, 2005.

20. This Court has also taken note of the discomfort of the Inquiry Officer while dealing with the issue of non-existence of 1425 quintals of wheat which allegedly was rejected by the State Warehousing Corporation and sent back to the Purchase Centre godown.

21. This Court is also not aware as to why the aforesaid amount of foodgrain was rejected. Was it bad in quality or in excess or the required procurement is not known from the records of this case.

22. Thus, this Court is not persuaded to put a stamp of approval or imprimatur over the conclusions arrived at by the Disciplinary Authority and also of the Appellate Authority.



23. For the reasons aforesaid, the order 08.01.2018 issued under the signature of the Director, Economics & Statistics Directorate (Planning and Development Department), Government of Bihar, Patna as also the order dated 28.09.2018 contained in Memo No. 341 issued under the signature of the Secretary, Planning and Development Department, Government of Bihar, Patna, are set aside.

24. The matter is remitted to the Disciplinary Authority to subject the petitioner to such proceedings *ab ovo* immediately from the stage of framing of charge. It would be open for the Department to adduce evidence and the petitioner to rebut such evidence. The entire exercise be concluded within a period of three months from the date of production of a copy of this order. Needless to state that the Disciplinary Authority shall look into the entire aspect of the matter afresh without at all being prejudiced or biased by the opinion noted down in the order. The opinion rendered are tentative



and based on the materials on record at the time of hearing of the petition.

25. With the aforesaid observation/direction, the petition is allowed/disposed of.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19/06/2019

