

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 2621 of 2004

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Chandeshwar Bharti, son of late Mithu Mochi, resident of Village – Tope, PS
– Daniyama, District - Patna

... .. Petitioner/s

Versus

- 1 Bihar State Warehousing Corporation, Maurya Complex, Patna through its Chairman
- 2 The Board of Directors of Bihar State Warehousing Corporation through its Chairman
- 3 Shri Brajendra Pandey, Managing Director, Bihar State Warehousing Corporation
- 4 The Executive Committee through its Chairman, Bihar State Warehousing Corporation Limited, Maurya Lok Complex, Patna
- 5 The Enquiry Officer -cum- Incharge Divisional Manager, Bihar State Warehousing Corporation Limited, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Anil Kr Singh, Surinder Kr, Advocates
For the Respondent/s	:	Mr Abhimanyu Sharma, Ms Prakritika Sharma, Advocates

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 05-07-2019

Heard learned counsel for the petitioner as well as the learned counsel for the respondent-Corporation.

2 Petitioner is aggrieved by his dismissal from the service of the respondent-Corporation under order dated 05.04.2003. Petitioner, at the relevant point of time, was Incharge Divisional Manager at Gaya. A charge memo was served on the petitioner wherein allegations were made, substance of which was irregularity in the maintenance of stock registers etc and failure to



conduct inspection. Another charge was to the extent that there was variance in the stock as per the verification report prepared at the time of petitioner's take over and when it was handed over to his successor Ravi Kant Mishra. The third charge was that stock, as per physical verification conducted in presence of the petitioner by the district authorities, was not found in the godown.

3 Learned counsel for the petitioner submits that the proceedings have been conducted in gross violation of the established norms for conduct of departmental proceedings and also in violation of the principles of natural justice and fair play. He further submits that the findings of the Disciplinary Authority are without reference to any material on record. They are based on suspicion, surmises, conjectures and by taking into consideration past material which could not have been relied upon for which the petitioner had already suffered earlier by virtue of an order of warning and some recoveries. The findings are also submitted to be at variance with the charges. Petitioner has alleged that during the entire course of the proceedings, no Presenting Officer had participated in the proceedings. The Enquiry Officer had arrogated upon himself the responsibility of the Presenting Officer and by doing so, he has caused great prejudice to the petitioner. Learned counsel has placed reliance on decision of the Apex Court



in the case of *State of Uttar Pradesh & Others -Versus- Saroj Kumar Sinha*, (2010) 2 Supreme Court Cases 772. Relying upon the said judgment, he submits that the status of an Enquiry Officer performing a quasi judicial function is one which requires high degree of fairness in action. The moment the Enquiry Officer steps into the shoes of the Presenting Officer and acts as an agent of the authorities, as has been done in the instant case, then fairness is the victim in the process. The second submission made by the learned counsel for the petitioner is that the findings of the Disciplinary Authority are such for which no charges have been communicated in the charge memo. Such findings, for which there were no charges, are unsustainable. In this connection, he placed reliance on decision of the Apex Court in the case of *M V Bijlani -Versus- Union of India & Others*, (2006) 5 Supreme Court Cases 88.

4 Learned counsel appearing for the respondent-Corporation, on the other hand, submits that the petitioner was afforded due opportunity by the authorities. He had participated in the proceedings. The Disciplinary Authority has taken into consideration his past conduct and was fully justified in doing so in view of the decision of the Apex Court in the case of *Union of India & Others -Versus- P Gunasekaran*, (2015) 2 Supreme Court



Cases 610. He submits that the petitioner, by virtue of his position, was under an obligation to ensure supervision over all the godowns under his charge. The manner of his functioning was such that the authorities have rightly visited the petitioner with the penalty of dismissal as he had failed to observe due diligence and caused huge loss to the Corporation. Having regard to the gravity of the misconduct alleged and proved in the proceedings, respondents have rightly awarded the extreme punishment to the petitioner.

5 This Court is of the view that the gravity of the charges, as highlighted by the learned counsel for the respondents, would cast a duty upon the respondent-authorities to deal with the same with due diligence while conducting the proceedings against the petitioner. The gravity of charges is not a single fact which could weigh in the mind of the Court. The Court would be required to see the manner in which the proceedings has been conducted against the petitioner and whether the charges have been brought home as a result of a fair process in strict compliance with the rules of natural justice and on the basis of material to support the conclusion on the standard of preponderance of probabilities.



6 In order to correctly appreciate the issue, this Court had earlier directed the authorities to produce the records of enquiry. The learned counsel for the respondents has produced the entire records pertaining to the disciplinary proceedings in compliance with the earlier order dated 22.06.2018. On going through the same, this Court would find that no Presenting Officer had appeared in the proceedings to present the case on behalf of the Corporation. On account of such a procedural lapse which goes at the root of fairness in discharge of the obligation by the Enquiry Officer, who has assumed the role of Enquiry Officer and having regard to the decision in the case of *Saroj Kumar Sinha (supra)*, the proceedings, on that count alone, would stand vitiated.

7 This Court, however, would proceed to examine the other submissions advanced by the petitioner's counsel that the findings of the Disciplinary Authority are not sustainable as being based on past misconduct of the petitioner and the fact that certain criminal cases were lodged against him. The order of the Disciplinary Authority dated 05.04.2003 shows total non-application of mind. The same is not based on any material in respect of charges for which the enquiry was conducted. Enquiry report is based on very strong suspicion having regard to the past misconduct of the petitioner, for which he has already been



punished. Only if charges had been established by a fair procedure and on basis of some material in the enquiry, the past conduct may have been examined by the authorities. Findings in the instant case are based on no evidence and product of an unfair process in violation of the principles of natural justice. Since conclusion of the Enquiry Officer itself is unsustainable, there is no scope for considering the past punishment, as at best that could be an additional factor. Past punishment alone, or along with strong suspicion cannot be made the basis of punishment in an enquiry.

8 One additional ground, which has been urged by the petitioner's counsel is that the order of punishment was passed by the Managing Director.

9 The Managing Director constitutes the Appellate Authority of the respondent-Corporation also. Such an order would, thus, deprive the petitioner of his right to appeal also. On that score also, the order of punishment is unsustainable.

10 This Court, in view of the aforesaid reasons, would hold that the entire proceedings against the petitioner including the order of punishment under order dated 05.04.2003 stands vitiated for the reasons aforementioned.

11 While concluding so, this Court would take note of certain developments in the meantime. The petitioner, after



issuance of the order of punishment crossed the age of superannuation in the year, 2009 itself. Learned counsels submit that the dues of the petitioner on account of GPF and CPF have been paid to the petitioner.

12 Be that as it may, this Court, having regard to the aforesaid findings, would quash the order of punishment dated 05.04.2003. At least, this takes care of the stigma which has been cast on the petitioner on the eve of his retirement.

13 Writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

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

