

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.462 of 2019

Arising out of

Civil Writ Jurisdiction Case No.13200 of 2017

=====

Sant Om Prakash, Aged about 55 years, Gender- Male, Son of Late Sadho Prasad, Resident of Village-Bele Bakaur, P.S.-Islampur, District-Nalanda

... .. Appellant/s

Versus

1. The State of Bihar through the Principle Secretary, Animal and Fish Resources Department, Government of Bihar, Patna.
2. The Director, Dairy Development Directorate, Bihar, Patna
3. The Enquiry Officer cum Deputy Director (Dairy) Dairy Development Directorate, Headquarter, Bihar, Patna
4. The District Dairy Development Officer, Madhubani, Animal and Fish Resources Department, Madhubani

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Ranjeet Kumar, Advocate Mr. Dilip Kumar, Advocate Mr. Kundan Kumar, Advocate
For the Respondent/s	:	Mrs. Nutan Sahay, A.C. to AAG

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-10-2019

The appellant being partly successful before the learned Single Judge, has filed this Intra Court Appeal questioning the direction issued by the leaned Single Judge in the impugned judgment dated 28.02.2019 in C.W.J.C. No. 13200 of 2017, whereby the matter has been remitted back to the respondent Department for appointing another Disciplinary Authority, who after going through the reply given by the



petitioner to the second show-cause notice and other evidence available on record, is to pass a fresh order in accordance with law. The dispute arises out of a disciplinary proceeding against the appellant who has been dismissed from service and has come up before this Court questioning the entire proceedings.

2. The main thrust of the argument on behalf of the appellant is that keeping in view the ratio of the judgment of the Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank and others**, reported in (2009) 2 SCC 570, the entire departmental inquiry being vitiated and having been found to be so on two occasions, there was no need to remand the matter for a decision afresh.

3. To appreciate the facts in brief, one need not go in detail, as the same have been noted in the first round of litigation before this Court, but the chronology deserves to be mentioned in order to appreciate the grievance of the appellant who is facing these proceedings since 2011.

4. One Kranti Kumar lodged a complaint with the Superintendent of Police, Vigilance, Muzaffarpur on 22nd December, 2011 that the appellant, who was functioning as a Dairy Field Officer in the District Dairy Development Office at Madhubani, had demanded a bribe from him in order to clear his



cheque for receiving the subsidy in respect of a Dairy loan that had been sanctioned in his favour. It was alleged that a sum of Rs. 1,000/- had already been paid to him and that the appellant had called upon the said Kranti Kumar to pay a sum of Rs. 4,000/- on 27th December, 2011. It may be mentioned that from the documents on record, the loan was for Rs. 70,850/- on which a subsidy was to be given to the loanee to the tune of Rs. 27,250/-. The loan was to be transacted on a margin money of Rs. 10,900/- to be deposited by the applicant. It is on this transaction that the amount of subsidy was to be reimbursed by way of a cheque that had led to the alleged demand of bribe by the appellant.

5. On 27th December, 2011 a trap was set up and according to the documents on record, including the pre-trap and the post-trap memos, the appellant was caught red handed in his office accepting a bribe of Rs. 4,000/- out of which there were three notes of Rs. 1,000/- each and two currency notes of Rs. 500/- each. The appellant was arrested and sent to jail.

6. The department proceeded to suspend him on 5th of January, 2012. The appellant was granted bail by the High Court on 24th April, 2012 and on 30th of May, 2012 his suspension was revoked.



7. The departmental proceedings were initiated with the issuance of a charge-sheet date 16.09.2013 communicated on 17.09.2013. At that stage, two charges were levelled, the first that of the appellant being involved in the trap case and the second charge was of being absent from duty with effect from 27th December, 2011 without information to the department. The inquiry proceeded without any oral evidence either of the original complainant Kranti Kumar or any of the officers or witnesses of the trap case. The Inquiry Report was submitted on 27th January, 2014 and a show-cause was issued on 11th February, 2014. An amended show-cause notice is said to have been issued on 14th February, 2014, but according to the appellant, before its service on 26.02.2014, the appellant was dismissed vide order dated 22nd February, 2014.

8. The evidence that was relied on were two documents, one was a press release dated 29.12.2011 and another letter dated 29.12.2011 in this regard. No other evidence, according to the appellant, was led and the inquiry was completed hurriedly without following the due procedure of law as provided under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The dismissal order was challenged in appeal before the Principal Secretary of



the department, Government of Bihar and on account of inaction, the appellant preferred C.W.J.C. No. 7245 of 2014 challenging the dismissal order on the ground that the appeal has remained unattended. During the pendency of the writ petition, the departmental appeal was decided on 27th January, 2015 that was dismissed which was challenged in the same writ petition through I.A. No. 9531 of 2015.

9. A learned Single Judge allowed the writ petition on 10th of March, 2016 in the following terms:-

“Considered the submissions of the parties and also perused the documents on record, the letter which form the basis of Form – K namely, letter no. 81 dated 29.12.2011, has not been brought on record by the State or given to the petitioner. The contention of the petitioner, thus, stands corroborated that the very document which formed the basis of the charge as contained in Form –K was a wholly relevant document and withholding the same from the petitioner amounted not only to arbitrary action but also colourable exercise of the power vested by the State. Such document could not be considered to be the document which was irrelevant if it was used as the basis of the charge. Non supply of the documents is bound to cause serious prejudice to the delinquent. It also appears that the enquiry was held on merely two



dates. On each of the dates, the petitioner appeared and demanded documents and list of witnesses so as to enable him to file reply to the charge, as contained in Form-K. Neither the complainant has been examined or his cross-examination has been brought on record by the respondent-State. It is also not stated by the respondent whether the statement of the complainant has been recorded by the State or to when the complainant was examined. Thus, this Court holds that non-examination of important witnesses also seriously vitiates the entire proceeding as it is prescribed under Rule 17 of the CCA rules. Similarly, the non-supply of enquiry report to the delinquent at the time when the second show cause was issued, that too without a clear 15 days' notice appears to be a startling example of violation of the rules, as prescribed in the aforementioned statute.

Another aspect of the matter which has been highlighted by the learned counsel appearing on behalf of the petitioner was that by the administrative instructions as contained in Circular No. 945 dated 24.06.2005 issued by Department of Administrative Reforms instructions have been issued regarding the manner in which such complaints from outsider be treated. Under such circulars it has been made incumbent that the complaints with regard to the government servants should be duly affidavited.



Such complainants who come for organizing trap must make their complaints in proper affidavit. It was indicated in the said circular that if at all such complaints came, the complainant must be ready to give the deposition at the relevant point of time. However, in the present case, there is no mention of any complainant being examined so as to establish the charge against the petitioner.

In view of the above discussions and considering the aforesaid facts and circumstances of the case, this Court has come to the considered opinion that the impugned order has been passed not only against the settled principles of law and in violation of the statutory rules but also in gross violation of the principle of natural justice. As such, this Court considers it to be in the interest of justice to quash the order of dismissal passed against the petitioner contained in Memo No. 01/2011 (Annexure-19). The writ application is thus, allowed and impugned order as contained in Annexure-19 is set aside and the petitioner is directed to be reinstated in service.

There shall be no order as to costs.”

10. The State of Bihar questioned the same in L.P.A. No. 691 of 2016 and while upholding the order of the learned Single Judge on the issue of procedural violations, the same was modified by directing a fresh consideration by the



Disciplinary Authority from the stage of framing of charge and supplying of documents to the appellant. Consequently, this was a fresh inquiry which had to be instituted and the status of the appellant was relegated back to the stage of suspension.

11. The judgment being short is extracted hereinunder:

“State is in intra-court appeal against part of the judgment and order dated 10.03.2016, passed in C.W.J.C. No. 7245 of 2015 (Sant Om Prakash Vs. The State of Bihar and others).

We have heard learned counsel for the State and Sri Rajeev Kumar Verma, learned Senior Counsel appearing for the contesting respondent in this appeal who was the successful writ petitioner for the purposes of final disposal of this appeal at this stage itself.

It appears that the writ petition was filed for setting aside the order of dismissal dated 22.02.2014, passed by the Director, Dairy Development Directorate, Patna dismissing the writ petitioner from service pursuant to a departmental proceeding. Learned Single Judge having set aside the order of dismissal had directed reinstatement of the writ petitioner-respondent.

Allegedly, on 27.12.2011 the writ petitioner was caught red-handed accepting bribe of Rs. 4,000/- for which Vigilance Case No. 91/11



was registered and the writ petitioner was taken into custody. Having been in custody for more than 48 hours he was put under suspension and subsequently a departmental proceeding was initiated against him. The departmental proceeding culminated in order of dismissal, which was challenged in the writ petition directly. From the order of the learned Single Judge it appears that the learned Single Judge found that two letters, which were documentary evidence, were not supplied to the writ petitioner. The witnesses upon whose statement the writ petitioner was being proceeded were not examined and the enquiry report was not served upon him to enable him to file second show cause reply. Upon these findings the learned Single Judge set aside the disciplinary proceedings and rightly so in our view. But what followed we do not approve. The learned Single Judge directed reinstatement of the writ petitioner.

In our view, considering the nature of charge and the nature of defect in the proceedings, it would have been appropriate for the learned Single Judge to remand the matter for proper proceeding. While doing so as the writ petitioner was under suspension the suspension would have continued. We must see in the context of a dismissal order so passed as to what relief a person gets as a consequence of irregularity in the departmental proceeding. Merely because



departmental proceedings are found vitiated, it does not follow, it has to be set aside and the delinquent officer directed to be reinstated. In the facts of the present case, we are of the opinion that it was a fit case in which the learned Single Judge ought to have remanded the matter for fresh consideration before the Disciplinary Authority. The two documents that were not supplied, we have seen. They were more inconsequential than consequential. However, in fairness, those documents, however, irrelevant it could have been, could be easily supplied. The witnesses, who proved the allegations, are required to be examined. But the fact remains that there was a FIR which the writ petitioner was aware which contained the allegations. It was for the writ petitioner to show that the allegations were wrong. However, this fact as also the fact of non-supply of enquiry report would at best vitiate the disciplinary proceedings but would not end at that. These are procedural irregularities. In our view, the appropriate order would have been to direct the disciplinary authority to start the proceedings afresh from the stage of framing of charge supplying documents to the writ petitioner examining officers and then once again submission of enquiry report disclosing the enquiry report to the delinquent. We, thus, direct accordingly. As the matter is being remanded for fresh consideration, it would be deem, fit and



proper to order that the writ petitioner, who was under suspension prior to the order of dismissal, would be put back to the same position i.e. he would continue to be under suspension subject to whatever order which may be ultimately passed by the disciplinary authority.

With these observations and directions this appeal stands disposed of.

Needless to say that as the matter was initiated in the year 2011 and the writ petitioner being under suspension the departmental authority should complete the disciplinary proceedings as early as possible preferably within six months from today.”

12. Pursuant to the aforesaid judgment dated 9th August, 2016, a re-inquiry was ordered on 29.08.2016 and a memo of charge was served which was re-shaped into three charges, from amongst the two charges that had been levelled earlier. On 27th September, 2016 the appellant gave a reply to the said charge denying the allegations and also indicating specifics of his defence including denial of any admission and prejudice being caused on account of other factors. We may put on record that a Special Leave Petition No. 35961 of 2017 had been filed challenging the orders of the High Court referred to above which was dismissed on 3rd January, 2017.



13. According to the appellant once again neither the complainant nor any officer nor any witness turned up in the fresh inquiry proceedings, and again an Inquiry Report was submitted on 27th April, 2017 indicting the petitioner of two charges. A second show-cause was issued on 09.05.2017 to which the appellant gave a reply on 29.05.2017 and a dismissal order was passed on 11.08.2017.

14. This dismissal order was assailed before the learned Single Judge praying for quashing of the entire proceedings right from the issuance of the charge-sheet and also on the ground that the dismissal order had been passed by the Inquiry Officer who had been promoted to a post where he exercised the powers of the Disciplinary Authority. Not only this, the dismissal order had been passed after discussion and approval of the Appellate Authority and, therefore, no appeal had been filed and there was enough reason to challenge the dismissal order directly before this Court.

15. Learned counsel for the appellant submits that in view of the law laid down in the case of **Roop Singh Negi (supra)**, and in the absence of any oral testimony and a couple of documents which were inconsequential, the respondents miserably failed to prove any of the charges and hence, the



proceedings deserve to be quashed. The prayer, therefore, is that the order of remand passed by the learned Single Judge should be set aside and the writ petition should be allowed in its entirety.

16. On the other hand, learned counsel for the State of Bihar submits that even though no appeal has been filed by the State against the impugned judgment, yet substantial justice has been done and the entire proceedings cannot be quashed as the order of remand is nothing else but an exercise which had to be undertaken in terms of the earlier judgment dated 9th August, 2016 by the Division Bench of this Court. It is submitted that the order of remand therefore is fully justified and does not call for any interference. It is also urged that the charge which emanates on the foundation of a vigilance trap where the appellant had been caught red handed accepting a bribe of Rs. 4,000/-, should not be sidelined or taken lightly, inasmuch as, the appellant was holding an office of trust and had breached the same by misconducting himself in a manner which was sufficient to take action against him on the charges of corruption. It is, therefore, submitted that there was sufficient evidence and the appellant has failed to dislodge the ex facie evidence of the vigilance case including the allegations



contained in the First Information Report. According to the learned counsel for the State, the allegations in the First Information Report were made the basis for the disciplinary proceedings which charges have not been denied by the appellant and in the said background the punishment of dismissal is the minimum that ought to be meted.

17. We have considered the submissions raised and we find that the learned Single Judge has exercised a judicious discretion in remitting the matter back for the simple reason that the Inquiry Officer who himself became the Disciplinary Authority has passed the impugned order of dismissal dated 11th August, 2017. We see no reason to differ from the said view taken by the learned Single Judge, inasmuch as, the order passed clearly amounts to a breach of the principle that no one can be a judge in his own cause. The impartiality and bias is also reflected in the impugned order dated 11th August, 2017, inasmuch as, only conclusions have been drawn without giving any reason in support of the order. The order, therefore, suffers additionally for malice in law and which obviously is on account of the bias and prejudice which the concerned officer Shri Ajay Nath Jha had in mind. The conclusion by the learned Single Judge, therefore, does not suffer from any infirmity on



that count.

18. Coming to the main argument on behalf of the appellant that the entire proceedings are vitiated, we are of the opinion that once we have found that the learned Single Judge was correct in quashing the order dated 11th August, 2017 which, in our opinion, was a nullity, then the obvious result of exercise of such certiorari by way of correction is that the authority itself should be commanded to pass an appropriate order in accordance with law. The High Court would be loathe to assume the role of a substituted Disciplinary Authority. We may, however, observe that the points raised by the learned counsel for the appellant for quashing the proceedings do require a serious consideration including the ratio of the judgment in the case of **Roop Singh Negi** (supra). The Disciplinary Authority, as per the direction of the learned Single Judge, will have to take into account the entire defence of the appellant wherein he has clearly denied any admission made by him with regard to the retention of the cheque of the subsidy amount purportedly for taking a bribe. The appellant has taken a clear stand on the basis of evidence that he had not retained the cheque for 10 days and the assumption of the retention of the cheque is absolutely without any basis. In the absence of any



such admission, the conclusion drawn in the Inquiry Report dated 27.04.2017 is without any basis. This aspect has to be specifically dealt with by the Disciplinary Authority. Secondly, the violation of procedure, as was observed by the learned Single Judge while allowing the writ petition on 10th of March, 2016 also deserves notice which has been completely overlooked by the Disciplinary Authority while passing the order dated 11.08.2017. The Disciplinary Authority has also not taken into account the explanation of the appellant that he was in jail and his absence stood explained. Nonetheless, since only two charges were found to be allegedly proved, it was necessary for the Disciplinary Authority to have arrived at a finding as to whether they were proved in accordance with the procedure prescribed in law or not. The appellant's clear case was that no dates were fixed and it is only the last date about which an information was given. In the absence of any oral inquiry and production of witnesses on behalf of the prosecution, the charges could not have been said to be proved according to the appellant. In our opinion, all these aspects do not find appropriate consideration in the order of the Disciplinary Authority dated 11.08.2017 which has been rightly quashed by the learned Single Judge.



19. The question of our quashing the entire proceedings has to be carefully viewed in the background that this is a case arising out of a vigilance trap case where the appellant has been prosecuted for the charge of accepting a bribe. We have therefore to be circumspect, and in such circumstances, we are of the firm view that the judicious discretion exercised by the learned Single Judge in remitting the matter does not call for any interference.

20. The appeal, therefore, is disposed of subject to the observations made hereinabove.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	27.08.2019
Uploading Date	15.10.2019
Transmission Date	

