

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12590 of 2010

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Mukul Kumar Sinha S/O Late Umesh Chandra Prasad R/O Mohalla-Dumduma, P.S. Laheriasarai, Distt.- Darbhanga, At Present R/O Flat No. 408, Vrindavan Gardens Apartment, Ashiyana Digha Road, Ram Nagari More, Town And Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Labour Resource Department, Bihar, Patna
3. The Joint Secretary, Labour Resource Department, Bihar, Patna
4. The Labour Commissioner, Labour Resource Department, Bihar, Patna
5. Sri Nandji Ram, The Joint Secretary Cum Enquiry Conducting Officer, Labour Resource Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Arun Kumar, Adv. Smt. Sandhya Kumari Sinha, Adv. Mr. Hans Lal Kumar, Adv.
For the Respondent/s	:	Mr. Prabhat Kumar Verma, AAG3 Mr. Sanjay Kumar Ghosarvey, AC to AAG3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 19-02-2019

Heard learned counsel for the parties.

Earlier this Court had directed the State to produce the original charge-sheet which was the basis for departmental proceeding and the same was served upon the petitioner, the case was adjourned thereafter but, the State has raised his hand that the original record with respect to approval of the charge-sheet is traceless and submits that he will make submission on the basis of documents available on record.

In the present case, the petitioner is challenging the order contained in letter no. 1669 dated 24.5.2010 (Annexure-16) by which the petitioner has been communicated that all the records, connected



to the departmental proceeding, having been supplied to him vide letter dated 3334 dated 25.11.2009 and they have refused to supply other documents. The petitioner has further challenged the order of punishment contained in Memo No. 2450 dated 9.8.2011 (Annexure-19) by filing an interlocutory application, I.A. No. 5907 of 2011, whereby and whereunder, the petitioner has been inflicted punishment of demotion reverting to the post of Labour Superintendent holding that the petitioner will not be entitled to salary for the period of suspension other than subsistence allowance. Thereafter, the petitioner filed appeal which has been rejected vide order dated 7.1.2013 (Annexure-30).

The short fact of this case is that the petitioner entered into the service of the State Government in the Labour Department and his first posting was on the post of Labour Enforcement Officer, whereafter, he was promoted to the post of Labour Superintendent but, was placed under suspension vide Memo No. 1940 dated 4.6.2007 on account of his confinement in the judicial custody in connection with Bihar P.S. Case No. 157 of 2007 for offence under Sections 7, 13, (1d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The suspension order was revoked vide letter contained in Memo No. 541 dated 12.2.2008 with effect from 1.8.2007 after release from the judicial custody but, again, he was put under suspension vide resolution contained in Memo No. 542 dated



12.2.2008 on the ground of pendency of the departmental proceeding under Rule 9, Sub Rule 1(a) & (c) & Sub Rule 3 of the Bihar Civil Service (Classification, Control and Appeal) Rules, 2005. When the petitioner was in custody, a departmental proceeding was initiated against the petitioner, he was served with the charge-sheet vide Memo No. 2212 dated 25.6.2007 signed by the Secretary, Labour Department attaching the copy of the charge-sheet and, in the said charge-sheet, the allegation has been made that the petitioner had demanded money from Premdip, S/o Sri Rajendra Prasad Singh in consideration of the labour license and he was apprehended while taking gratification by Raiding Party constituted by the District Magistrate, hereafter, the petitioner faced the departmental proceeding. The departmental proceeding was conducted by the Joint Secretary cum Conducting Officer.

From the original records produced by the State, it appears that four witnesses have been examined on behalf of the prosecution, namely, Sri S.M. Wasimul Haque, Peon and Sri Rana Kumar, Clerk were examined on 5.3.2009 and Sri Rajendra Mandal and Sri Prem Deep were examined as witness on 18.4.2009, whereafter, it does not show that any date was fixed for the purpose of giving an opportunity to bring on record the evidence from the side of the petitioner, straightway, thereafter, the Enquiry Officer has recorded the findings



on imputation against the petitioner led to demotion to the post of Labour Enforcement Officer.

Learned counsel for the petitioner has challenged the proceeding on the grounds that the entire departmental proceeding is vitiated on the ground that the charge-sheet was not issued or approved by the competent authority secondly the charge-sheet which was supplied to the petitioner was signed by the District Magistrate. He further submits that the forwarding letter along with charge-sheet produced by the State is a draft charge-sheet not the final document showing that the competent authority has issued or approved the charge-sheet and that document attached with the charge-sheet, the signature has been put by the Secretary but there is cutting and overwriting.

Mr. P.K. Verma has also produced the original record with regard to approval of the charge-sheet and placed reliance on certain notings in the file dated 24.5.2010. On perusal of that, it appears that after his arrest, the matter was placed before the Hon'ble Minister concerned, he approved for initiation of the disciplinary enquiry but, there is no record to show that he has approved the charge-sheet. Approval of initiation of disciplinary proceeding is one transaction and approval of the charge-sheet is quite different transaction and that has been explained by the Hon'ble Apex Court in the case of V. Gopinath reported in 2014 (1) SCC 351 and in the case of State of



Tamilandu Vs. P. Kumar in Civil Appeal No. 8427-8428/2018. In both the judgments, the Court has made a distinction of approval of initiation of departmental proceeding and approval of the charge-sheet. The approval of proceeding does not mean approval of charge-sheet. The provision of Rule, 2005 is pari materia to the provision of Civil Services Condition and Appeal Rule. So, this judgment squarely cover this case, inasmuch as, it has been argued that the proceeding is also vitiated on further two counts that the petitioner was not given a chance to represent fairly and properly as the Enquiry Officer has not fixed any date for his evidence. Further submitted that when the petitioner has filed his second show-cause and the same has been rejected by a cryptic order vide order dated 13.8.2010, on perusal of this order, it shows that it has been recorded in the following terms:-

“उपर्युक्त विषयक आपके अभ्यावेदन दिनांक 1.6.2010 के प्रसंग में निदेशानुसार कहना है कि आपके द्वारा दिए गये द्वितीय कारण पृच्छा का पूरक स्पष्टीकरण को सम्यक विचारोपरान्त सरकार द्वारा संचिकास्त कर दिया गया है।”

and that has been followed by the order of punishment vide Memo No. 2450 dated 9.8.2011.

Learned counsel for the petitioner has submitted that this rejection of the second show-cause does not disclose any reason and the authority was required to assign reason while rejecting the application, the authority concerned must have considered all the fact which was brought by the petitioner and further said that the appeal



which was filed by the petitioner also has been rejected vide letter dated 7.1.2013.

Learned counsel for the State has tried to justify the entire proceeding having stated that the memorandum dated 25.6.2007 itself shows that the Government of Bihar has taken a decision for initiation of departmental proceeding and the document, which forms the memorandum, was also approved and further said that the petitioner has not demanded an opportunity to lead evidence on his behalf and, thus, there was no other option for the Enquiry Officer but, to close the proceedings. It has further been argued that the petitioner was represented by his advocate and he was given an opportunity to cross-examine but, he has preferred to cross-examine only one out of four witnesses and has not examined the rest of the witnesses and, thus, he cannot claim that the enquiry was not fair.

Having considered the rival contentions of the parties, this Court would have accepted the submission of the State, had the State would have produced the original record for perusal of this Court of approval of charge-sheet but, the record that has been produced before this Court shows approval of initiation of proceeding but, the document that has been produced by the State to show approval of charge-sheet itself shows that the charge-sheet was in draft stage and, it is nothing but, to fill up the form by the office, itself shows in what manner the competent authority has perused the charge-sheet and



granted approval and it also suffers from irregularity that the Enquiry Officer, even though he has not made any specific prayer but, the fairness was required that he should have offered an opportunity to the petitioner to produce the witness in support of his defence but, the order-sheet itself shows that two witnesses were examined on 8.4.2009 and just, thereafter, it has been recorded that the enquiry has been concluded vide order dated 27.4.2009 as the last witness was examined on 8.4.2009 though it bears the signature of the parties but, the order-sheet dated 27.4.2009 does show only one signature of the Enquiry Officer, whereafter, a finding has been recorded against the petitioner.

Of-course this Court, in the judicial review, will examine the decision making process not the decision and the decision should be fair and proper and it must be decided in the touch-stone of fairness in terms of Article 14 of the Constitution of India. The record, which has been placed before this Court, only shows that the authority concerned has approved the initiation of proceeding but, it does not disclose the approval of the charge-sheet which is a sine-quo-non for a departmental proceeding as per judgment passed in the case of Union of India Vs. B.V. Gopinath reported in (2014) 1 SCC 351 and also the enquiry proceeding suffers from illegality on the ground that the Enquiry Officer has not granted an opportunity to the petitioner to bring his witness in support of his case as well as the



Disciplinary Authority, while rejecting the second show-cause, has not disclosed any reason or consideration of the second show-cause.

In that view of the matter, the entire proceeding vitiates. However, liberty is granted to the State, if so like, he may initiate a proceeding in accordance with law from the stage of fresh charge-sheet. In the consequence, the resolution dated 25.6.2007 (Annexure-2) is also quashed.

In the result, this writ application stands allowed to the extent indicated above.

The original record placed before this Court for its perusal is returned to the counsel for the State.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2019
Transmission Date	

