

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1593 of 2015**  
**In**  
**Civil Writ Jurisdiction Case No.2176 of 2004**

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Ajit Kumar Singh, son of Sri Mrityunjoy Narayan Singh, resident of village and P.O.- Panchgachia, P.S.- Bihra, District- Saharsa, at present posted as Civil Engineer, Emp. No. 65721, Maintenance (Civil) Department, Barauni Refinery, Begusarai. ... .. Appellant

Versus

1. The Union Of India through the Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi-110001.
2. The Indian Oil Corporation through its Chairman, Indian Oil Corporation Ltd., Scope Complex, Core-2, Lodhi Road, New Delhi.
3. The Director-cum-Appellate Authority, Indian Oil Corporation Limited, Refineries Division, Core-2, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi.
4. The Executive Director-cum-Disciplinary Authority, Refineries Division, Barauni refinery, Begusarai.
5. Mr. H.K. Mishra, presently Senior Project Manager-cum-Inquiry Officer, Barauni Refinery, Begusarai.

... .. Respondents

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**Appearance :**

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| For the Appellant/s  | : | Mr. Amrit Abhijat, Adv.        |
| For the Respondent/s | : | Mr. S.D Sanjay Addl. Soc. Gen. |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**and**

**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 28-02-2019**

Heard Mr. Amrit Abhijat, learned counsel for the appellant and Mr. Anil Kumar Sinha, learned counsel for the Oil Company.

This intra-Court appeal filed under Clause X of the Letters Patent of the High Court of Judicature at Patna arises from the judgment and order dated 25.6.2015 passed by a learned Single



Judge of this Court in C.W.J.C.No. 2176/2004, whereby the writ petition has been dismissed.

The writ petition was filed by the appellant feeling aggrieved by the appellate order dated 18.11.2003 passed by the Director, whereby the order of penalty passed by the Executive Director cum Disciplinary Authority as contained in the letter dated 7.8.2003 for inflicting punishment of withholding of five annual increment with cumulative effect from 1.1.2004 under Rule 29 of the Conduct, Discipline and Appeal Rules, 1980 regulating service conditions of the employees of the Indian Oil Corporation, was affirmed.

We do not intend to engage ourselves in a long drawn discussion on the facts of the case. Suffice it to say that a tender was invited by the respondent Corporation for allotment of job of Repair of Surface drain and tank pad on 30.6.2001 and against which three parties responded, namely, M/s Laxmi Singh, M/s B.S.Jha and the third party whose name does not find disclosed anywhere in the pleadings.

Since for the purpose of consideration of the issue, it is not necessary for us to know the details of the third party, we waive of the requirement and would concentrate on the issue in



dispute which led to the proceeding and involves two of the three tenderers, namely M/s Laxmi Singh and M/s B.S.Jha.

The charge sheet on record of the proceedings would reflect that twelve parties were approved for limited tender of which six parties collected the tender document and only three parties responded by submitting their bids. On 24.8.2001, the 'Techno Commercial part' of all the three bidders were opened and signed by Shri K.C.Patel, DMCL (Contract Cell Representative) and Shri Saurabh Mitra, SACO (Finance Representative). The bids of the three parties were submitted alongwith Techno Commercial Bid in enclosed envelopes with remarks "not opened today". The charge sheet reflects that these envelopes were kept under lock and key in the drawer of Shri Patel and whose duplicate key was available with the petitioner herein. On 1.10.2001 the price bids were opened in presence of Shri G.S.Mahto, DFM (Finance Representative), Shri K.C. Patel (Contract Cell Representative) and the representative of the party M/s B.S.Jha and the bids/ Form of Quotation were reproduced in the tender opening register by Shri B.K.Mishra.

Until this date there is no dispute nor there is any charge of interpolation. It is also mentioned in the charge sheet that the entry in the register was duly endorsed by Shri Patel and Shri



Mahto. The charge sheet while acknowledging that the petitioner was on leave on 1.10.2001 alleges that in between 24.8.2001 and 1.10.2001 when the price bids were opened, the envelope carrying the price bid of M/s Laxmi Singh kept in the drawer was opened, the form of quotation was changed, the envelop was re-pasted and put back in the drawer. According to the charge, this was done allegedly to benefit M/s Laxmi Singh.

The charge sheet further alleges that on the next day i.e. 3.10.2001 while preparing a comparative statement that Shri Patel observed of some change in the form relatable to M/s B.S.Jha which was different from the original quoted percentage and resultantly improved M/s B.S.Jha position from L-2 to L-1. It is on the basis of the interpolations allegedly present in the bids of M/s Laxmi Singh and M/s B.S.Jha that this petitioner being the second man in command, in the Contract Cell and having a duplicate key of the drawer where the bid documents are stated to be kept, was proceeded with and it is charging the petitioner of connivance, that the proceeding was drawn to result in the punishment of stoppage of five annual increments with cumulative effect and feeling aggrieved that he came before this Court but the writ petition has been dismissed and hence, this appeal.



As we have observed above, the facts lie in a very narrow compass and even the evidence led to support the charge is mere suspicion for it is simply because the duplicate keys of the drawer in which the documents relating to the price bids were kept, was in possession of the petitioner, which has led to the imposition of penalty. While Mr. Abhijat, learned counsel for the petitioner, submits that the penalty order is based on no evidence, it is supporting the impugned action that Mr. Sinha has argued that a departmental proceeding need not be held in the manner of a criminal proceeding nor it is necessary to lead a number of evidence rather would depend on the preponderance of probability and since the keys were undisputedly in possession of the petitioner, he cannot escape from the liability of interpolation.

As we have noted while according to Mr. Amrit Abhijat the conclusion drawn is based on no evidence and it is on a mere suspicion that the charges have been framed and penalty order passed, Mr. Sinha, learned counsel for the Corporation while defending the impugned action has taken us through the evidence of Shri K.C.Patel, the Contract Cell Representative, in whose drawer the bids were supposed to be kept to justify the impugned action on the principles underlying the disciplinary proceeding which do not require a threadbare adjudication.



In our opinion, the case in hand is not a case of preponderance of probability on the basis of evidence adduced rather the case is of a clear absence of evidence. The reply of the petitioner is present on the pleadings and he was on leave since 30<sup>th</sup> September, 2001. In fact the charge sheet also acknowledges the fact that when the tender documents were opened on 1.10.2001 the petitioner was on leave. The charge sheet also records that when the tender documents were opened on 1.10.2001 in presence of the other tenderer Shri B.S.Jha there was no interpolation in the documents. It also acknowledges that the bids given by three tenderers were recorded in the tender opening register. Despite this fact the allegation is that in between the charge 24.8.2001 when the Techno Commercial part of three bidders were opened, signed by the representative of the Tender Committee and reserved for the decision in the drawer of Shri K.C.Patel until it was opened on 1.10.2001 for preparing the comparative statement that not only an interpolation in the bid of M/s Laxmi Singh was seen rather an interpolation was also carried out in the bid of Shri M/s B.S.Jha. The statement of Shri K.C.Patel in whose drawer the documents were kept is available on the records of the proceedings and at no place as he charged this petitioner of misusing the trust of possessing the duplicate key of the drawer. It is undisputed that the



contract documents were kept in the drawer of Shri K.C.Patel whose duplicate was available with the petitioner and thus onus to be discharged was by Shri K.C.Patel as to how interpolations crept into the documents but while making his statement and giving explanation thereto, Sri K.C.Patel makes no allegation against the petitioner.

We fail to appreciate the evidence available with the respondent Corporation to proceed against the petitioner, even when the custodian of the documents Sri K.C.Patel while knowing that the duplicate key was in possession of the petitioner, yet did not choose to charge him with connivance or of misusing his trust in using keys for purposes other than required. In our opinion, in the circumstances noted, there was no occasion for the disciplinary authority to either proceed against the petitioner or for the Enquiry Officer to uphold the charge because it is well settled that mere suspicion alone, cannot be a basis for a disciplinary proceeding nor can be a reason for imposition of penalty.

Mr. Sinha is correct on his proposition when he submits that a disciplinary proceedings has to be tested within the parameters of a fair discharge of obligation by the Enquiry Officer and the disciplinary authority and the availability of some evidence to support the charge and to connect it with the



delinquent because in such circumstances the matter needs examination on the well known principles of preponderance of probability. None can dispute the proposition advanced except that it fails to apply in the present case for neither there is any evidence available with the Corporation which would support the charge of the petitioner's connivance in the interpolation nor any motive is assigned to the charge. The question is that there are interpolation in the bids of the two of the three bidders and the charge sheet does not indicate as to which of these two bidders drew advantage by the interpolation. The charge is vague and even more vague is the finding drawn by the Enquiry Officer thereon. Even the order of the disciplinary authority is non-speaking for it does not attribute any reason for upholding the view of the Enquiry Officer nor gives reasons as to why explanation of the petitioner is not sustainable. In fact not only the disciplinary authority but even the appellate authority are completely silent on reasons on the issue raised by the petitioner in his reply before the disciplinary authority through the show cause as well as in appeal before the appellate authority. The orders impugned lack application of mind.

There are other reasons as well to hold the proceedings absolutely void and without foundation but the discussions above that we have made are sufficient for the present, to hold that the



entire proceedings initiated against the petitioner is without foundation, based on no evidence and the orders passed thereon are without application of mind. Unfortunately learned Single Judge even while noting as such at paragraphs 10 and 11 yet has proceeded to uphold the punishment.

We are in respectful disagreement with the opinion of the learned Single Judge to quash the entire proceedings culminating in the order of penalty passed by the disciplinary authority dated 7.8.2003 together with the appellate order dated 18.11.2003, which are accordingly quashed and set aside. Consequently, the writ petition is allowed.

The petitioner is restored to all his increments and other consequential benefits which should be provided to him within three months from the date of receipt/ production of a copy of this judgment.

The appeal is allowed but without any order as to costs.

**(Jyoti Saran, J)**

Surendra/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 09.04.2019 |
| Transmission Date | NA         |

**( Arvind Srivastava, J)**

