

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10657 of 2005

Mostt. Shanti Devi, wife of Baidyanath Siungh, resident of Village Barka
Lauhar, PS Barhara, District Bhojpur

... .. Petitioner

Versus

1. The Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan,
5th Floor Birchand Patel Path Patna 1, through its Chairman-cum- Managing
Director.
2. The Chairman-cum- Managing Director, Bihar State Food & Civil
Supplies Corporation Limited, Sone Bhawan, 5th Floor Birchand Patel Path
Patna 1
3. The Chief of Administration, Bihar State Food & Civil Supplies
Corporation Limited, Sone Bhawan, 5th Floor Birchand Patel Path Patna 1
4. The Chief of Storage, Bihar State Food & Civil Supplies Corporation
Limited, Sone Bhawan, 5th Floor Birchand Patel Path Patna 1
5. The Chief of Claims, Bihar State Food & Civil Supplies Corporation
Limited, Sone Bhawan, 5th Floor Birchand Patel Path Patna 1
6. The District Manager, Bihar State Food & Civil Supplies Corporation
Limited, Samastipur
7. The District Manager, Bihar State Food & Civil Supplies Corporation
Limited, Rohtas at Sasaram
8. The District Manager, Bihar State Food & Civil Supplies Corporation
Limited, Dumka

..... Respondents

Appearance :

For the Petitioner/s	:	Mrs. Shashi Priya Pathak Mr. Ambrish Kumar Jha
For the Respondent/s	:	Mr. Shailendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 16-08-2019

Heard learned Counsel for the petitioner as well as the
learned Counsel appearing for the respondent Corporation.

The writ petition has been filed praying for quashing of
the order dated 4.12.2004, passed by Chairman -cum- Managing
Director of the respondent Corporation rejecting petitioner's
review application against order dated 24.9.2003. The penalty of



dismissal from service awarded under communication dated 24.9.2003 by the Chairman -cum- Managing Director has also been challenged whereby the petitioner has been dismissed from service and a direction has been made to recover a sum of Rs. 3,85,531.88 paise from salary/allowances/gratuity amount of the petitioner @ 18% simple interest on the amount recoverable. The writ petition has also prayed for relief of reinstatement, which relief in view of event subsequent to filing of the writ petition has become infructuous as the original petitioner died on 22.1.2015 and now the matter is being pursued by his wife (legal heir).

The brief background of the case is being taken note of. The petitioner was a Deputy Godown Manager and was incharge of certain godowns within his jurisdiction. While posted as Assistant Godown Manager at Rohtas he was alleged to have been responsible for loss of food grains within his jurisdiction to the tune of Rs. 5,44,172.00. Enquiry was conducted and on 29.11.1997 he was held liable for loss to the tune of Rs. 4,23,215.51 plus 18% interest. The amount was to be recovered @ 50% of monthly salary of the petitioner.

Thereafter the petitioner came to be posted as Deputy Godown Manager, where the charge memo which is subject matter of the instant proceeding was issued to the petitioner on 30.1.2003.



The charge memo in *prapatra* “Ka” was served on the petitioner under communication dated 3.2.2003 issued by the disciplinary authority.

Petitioner’s Counsel submits that bare perusal of the charge memo shows that the same is in fact a post decisional opportunity of hearing. The authorities have concluded that an amount of RS. 1,95,178.37 was the quantification of loss caused due to loss of food grains and otherwise in the godowns in the petitioner’s jurisdiction. The charge memo does not disclose how the petitioner is alleged to be responsible for the loss alleged or what was the misconduct committed by the petitioner which gave rise to such a loss.

Counsel for the petitioner has placed reliance of a decision reported in (2010) 13 SCC 427 (*Oryx Fisheries (P) Ltd. v. Union of India*) to submit that in view of decision of the apex court the charges were required to be specific so as to enable the petitioner to respond to the same. When the conclusion is already contained in the charge memo there is nothing left to be examined/considered, for which the petitioner may respond. The charge memo in the circumstances is grossly unsustainable in the eyes of law as it is unfair and nothing short of a post decisional hearing.



Bare perusal of the charge memo shows that the same suffers from legal infirmity as submitted by Counsel for the petitioner.

Mr. Shailendra Kumar Singh, appearing for the respondent Corporation, submits that the enquiry was conducted wherein the liability was fixed on the petitioner under various heads which are duly and meticulously quantified. The review order also, which is impugned in the instant proceeding, is a well considered order. The petitioner having been found liable for loss of food grains was rightly punished by order of punishment issued by the disciplinary authority.

In the opinion of this Court, the charge memo itself does not lay foundation for any enquiry as it is already conclusive of the petitioner's liability. The manner in which the charge memo has been issued leaves no iota of doubt that the proceedings thereafter were nothing but an empty formality. The fact that the authorities have meticulously summed up the liability without any charge in respect thereof cannot be accepted. The charge memo under communication dated 3.2.2003 itself is unsustainable in the eyes of law having regard to the judgment of the Apex Court relied upon by Counsel for the petitioner. The order of the disciplinary



authority imposing the punishment which is product of such an illegal exercise cannot be sustained.

Counsel for the respondent Corporation submits that the liability arising out of the proceeding in relation to period of earlier posting of the petitioner at Rohtas was quantified at Rs. 4,23,२15.51 plus 18 % interest has never been assailed and has attained finality between the parties. The Corporation on account of the said punishment has already recovered RS. 2,23,862/- from the petitioner.

The said submission is being taken note of but is not relevant for the instant proceeding as the amount under the earlier order of punishment are not in issue in the instant proceeding as the same has attained finality even as per the order dated 27.3.2003 passed on the petitioner's earlier writ petition bearing CWJC No. 14402 of 2002.

Without expressing any opinion in respect of the punishment arising out of the earlier proceedings, this Court would hold that the order passed by the disciplinary authority dated 24.9.2003 as well as the order passed by the reviewing authority dated 4.12.2004 are unsustainable as the same are without specifying any charge in respect thereof in the charge memo under communication dated 03.02.03. The orders suffer from the vice of



violation of natural justice and fairness and are hereby quashed.

The petitioner as a consequence would be entitled to all due benefits.

The writ petition stands allowed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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