

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4595 of 2011

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Yamuna Prasad Singh, S/o Late Ram Swaroop Singh, R/O New Sidhauri
Road, Dalmiyanagar, P.O. + P.S.Dalmiyanagar, Distt.-Rohtas At Sasaram.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Agriculture, Govt. of Bihar, Patna.
4. The Agriculture Production Commissioner, Govt. of Bihar, Patna.
5. The Joint Secretary, Department of Agriculture, Govt. of Bihar, Patna.
6. The Deputy Secretary, Agriculture Department, Govt. of Bihar, Patna.
7. The Director, Agriculture, Bihar, Patna.
8. The Joint Director, Agriculture, Patna Circle, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Tiwary, Advocate Mr. Shashi Ranjan Tiwary, Advocate
For the Respondent/s	:	Mr. Rakesh Ranjan, A.C. to G.P.-20

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-01-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner is challenging the order dated 05.03.2003 (Annexure-5), whereby and whereunder the petitioner has been dismissed from the service holding that serious charges have been proved against him and vide order dated 17.08.2006 (Annexure-6) the appeal of the petitioner has been rejected.



3. The petitioner, at the time of issuance of charge-sheet, was discharging the duty as Block Development Officer, posted at Patori, Samastipur. Huge Government money was siphoned, on that account criminal case was lodged vide Patori P.S. Case No.121 of 1997 as well as the petitioner has been proceeded in a departmental proceeding along with one Shivjee Prasad, who at the relevant time, was discharging the duty as Nazir of the Block. An independent separate departmental inquiry was initiated, he was served the charge-sheet vide memo no.80 dated 16.05.1998, making five allegations against the petitioner, which are not required to be dealt with elaborately, and he was asked to file his explanation. Thereafter, the petitioner has filed his explanation as well as he has also filed explanation before the Inquiry Officer in detail, showing that he was not attached or connected in any manner with respect to embezzlement of the Government fund. As the disciplinary authority as well as the Inquiry Officer were not satisfied with the explanation, a departmental proceeding was initiated and the Inquiry Officer vide letter no.1543 dated 06.06.2000 submitted his report before the disciplinary authority and recorded that the prosecution has failed to prove any of the charge and everywhere it has been recorded that the petitioner



cannot be held responsible for the charges levelled against him. But, it appears that instead of exercising of power by the disciplinary authority, the Deputy Secretary, Agriculture Department, Government of Bihar, has passed the order, holding that the charges have been proved against the petitioner. The appeal has been dismissed, which also suffers from same illegality, which could not be rectified even at the appellate stage.

4. Learned counsel for the petitioner submits that when the inquiry report has been submitted in favour of the delinquent employee and if the disciplinary authority disagrees with the report, then the law prescribes that the disciplinary authority will record his difference of opinion, ask explanation on that score and in the event he is not satisfied with the explanation furnished by the delinquent employee then only he can take decision as per his wisdom.

5. In support of his contentions, learned counsel for the petitioner placed reliance on the decision rendered in the case of ***Punjab National Bank vs. Kunj Bihari Mishra*** reported in ***1998 (7) SCC 84*** and in the case of ***Yoginath D. Bagde vs State of Maharashtra & Anr.*** reported in ***AIR 1999 SC 3734***, wherein it has been held that if the disciplinary authority differs



with the view of the Inquiry Officer he has to record a tentative reason for disagreement and ask explanation from the delinquent employee, on receipt of the same, the disciplinary authority will have a liberty to take action against the delinquent Government servant as per law. However, in the present case, the Inquiry Officer has submitted the report in favour of the petitioner, the disciplinary authority instead of recording the difference of opinion straight-way held that the charges have been proved against the petitioner without analysing the inquiry report, but he has given his own reason and abruptly by cryptic order recorded that the charges have been proved. This Court cannot loss sight of the fact, as has been submitted, that the petitioner was appointed substantively in the Agriculture Department and was substantively holding the post of Assistant Jute Officer, whose appointing authority is the Director, Agriculture Department and the Government can be an appellate authority, but in the present case in stead of exercising the power by the disciplinary authority the appellate authority has straight-way exercised the power and dismissed the petitioner from the service. Appeal is completely a misnomer in the sense that the same authority has exercised the power of appeal and dismissed the same.



6. In the case of *Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank & Ors.* reported in *1995 SCC (2) 474*, wherein the Hon'ble Supreme Court has held that if the punishment order is passed by the appellate authority, in that circumstance, the Government servant will be deprived of the right of appeal and on that ground the Hon'ble Supreme Court has set aside the order and remanded back the matter to the competent authority.

7. In this case, this Court finds that the order is suffering from two infirmities on the ground that instead of disciplinary authority the appellate authority has exercised the power, depriving him the right of appeal and another is procedural irregularity in the sense that when the Inquiry Officer has submitted the report in favour of the petitioner, in that circumstance, the Disciplinary Authority was required to record his difference of opinion and furnish the same, ask explanation from the petitioner and after receipt of the explanation, he should have passed the order of punishment.

8. In such view of the matter, the order dated 05.03.2003 (Annexure-5) and the order dated 17.08..2006 (Annexure-6) are quashed. The matter is remanded back to the competent authority to take appropriate action in the matter, if



they so liked. It is relevant to say that the petitioner has already superannuated from the service in the year 2004. Hence, it is supposed that all the actions will be taken by the respondent authority, if they so like, within a period of six months from the date of receipt/production of a copy of this order.

9. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	01.02.2019
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