

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.877 of 2017

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Ranjan Prasad Srivastava, Son of Late Shiv Shankar Prasad, Resident of Bapu Nagar, New Yaarpur, Road No. 1, P.S. Gardanibagh, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Government of Bihar, Patna.
2. The Secretary Budget-Cum-Commissioner Accounts and Administration-Cum-Appellate Authority, Department of Finance, Government of Bihar, Patna
3. The Director, Provident Fund Directorate, Department of Finance, Government of Bihar, Patna
4. The Deputy Director-Cum-Conducting Officer of Departmental Inquiry, Provident Fund Directorate, Department of Finance, Government of Bihar, Patna
5. The Deputy Director-cum-Presenting Officer, Provident Fund Directorate, Department of Finance, Government of Bihar, Patna
6. The Deputy Secretary-cum-Assistant Director, Provident Fund Directorate, Department of Finance, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Advocate
For the Respondent/s : Mr. Sarvesh Kumar-GP 24

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 08-07-2019

Heard the learned counsel for the parties.

2. The petitioner has challenged the order dated 02.04.2014 contained in Annexure-12 to the petition, passed by the Director, Provident Fund Directorate whereby the petitioner has been served with a punishment of dismissal from service as also the order passed by the appellate authority dated 25.01.2016, dismissing the appeal of the petitioner and affirming the order of the



disciplinary authority (contained in Annexure-14 to the writ petition).

3. The main ground of challenge to the aforesaid two orders is that the petitioner has been dismissed from service and appeal against the aforesaid order has also been rejected without the charges in the departmental proceeding having been proved against him; and that there is nothing in the enquiry report which would refer to any evidence with respect to demand of bribe money by the petitioner from the complainant. It has also been urged that in the absence of any witness having been examined by the department to prove the charge of demand of bribe and accepting the same the petitioner could not have been punished. The other ground of challenge is that charge no. 5 viz. of the petitioner having deliberately delayed the disposal of the file relating to the complainant is only by way of inference and such charge is the basis for accepting the other four charges against the petitioner of having demanded and accepted the bribe for doing an official work.

4. The learned counsel appearing for the petitioner has further submitted that from the enquiry report, it was evident that with respect to charges no. 1 to 4, which primarily dealt with demand and acceptance of bribe, the opinion of the enquiry officer was that since the



matter is pending adjudication before a criminal court, no opinion could be given with respect to such charges. If the disciplinary authority disagreed with the aforesaid finding of the enquiry officer, the reasons for such departure from the opinion of the enquiry officer had to be communicated to the petitioner and his response to the aforesaid difference of opinion had surely to be taken. The overall refrain of the learned counsel for the petitioner in challenging the orders impugned is that they have been passed in the absence of proof of any documents put forth by the prosecution.

5. To recapitulate the facts in short, it is noted that while the petitioner was posted as a Clerk in the office of the District Provident Fund Officer, Patna, a complaint was filed by one Surendra Prasad Singh before the SHO, Vigilance Police Station Patna on 16.09.2008 that the petitioner was demanding Rs. 6000/- as illegal gratification for payment of provident fund amount. On the aforesaid complaint, a verification was made by one verifier on the oral orders of the Director General of Police, Vigilance Investigation Bureau and a pre-trap memorandum was prepared. The trap was conducted on 18.09.2008 in which the petitioner has been shown to have been arrested accepting bribe money. A case vide Vigilance P.S. Case No. 69 of 2008 dated 18.09.2008 was



registered under Section 7/13(2) read with Section 13(1) (b) of the Prevention of Corruption Act, 1988.

6. The petitioner was placed under suspension and charges were framed against him on 05.01.2010 which was communicated to him on 06.01.2010. Altogether five charges were framed against the petitioner, four out of which being for making a demand and accepting illegal gratification and the fifth charge being of deliberately delaying the processing of the paper for withdrawal of provident fund amount by the complainant.

7. It has been submitted on behalf of the petitioner that in the memo of evidence, only the FIR of the vigilance case, pre and post trap memorandum, note of the verifier and the note sheet of the file were produced. It was reiterated that no witness was named even to prove those documents.

8. The petitioner denied the aforesaid charges and asked for the supply of documents which was refused on the ground of same not being available on record.

9. A perusal of the enquiry report would indicate that with respect to charges no. 1 to 3, it was held to be not proved and with respect to charge no. 5, it was opined that the aforesaid charge also would be dependent on the decision of the court in the vigilance case.



10. A second show cause notice dated 10.02.2014 was served upon the petitioner to which the petitioner replied.

11. However the disciplinary authority vide order dated 02.04.2014 (Annexure 12 to the writ petition) accepted the report of the enquiry officer and dismissed the petitioner from service.

12. It is also relevant here to note that the petitioner had challenged the very initiation of departmental proceeding and his suspension on three occasions vide C.W.J.C. No. 6607 of 2014 in which a Bench of this Court vide order dated 08.12.2014 had observed that the appellate authority would be obliged to dispose of the appeal, preferably within a period of four months from the date of production of a copy of the order. The petitioner by that time had filed the appeal but when the timeline provided by the court was not respected, a contempt petition also was filed whereafter the appellate authority vide order dated 29.01.2016 rejected the appeal and upheld the order of the disciplinary authority.

13. Learned counsel appearing for the petitioner submits that the appellate authority put his imprimatur on the order of the disciplinary authority only because a contempt petition was filed for the appeal not having been



disposed of within a period of three months of the production of a copy of the High Court order.

14. It has been urged on behalf of the petitioner therefore that neither the disciplinary authority took into account the requirements under Section 17(3) to 17(23) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 nor the appellate authority took note of the departure from the aforesaid requirement. Neither the complainant/Surendra Prasad Singh nor any member of the raiding team were examined. Even the documents in the memo of evidence were not proved.

15. The learned counsel for the State however defended the aforesaid orders on the ground that the petitioner was afforded reasonable opportunity to defend himself. All the procedural formalities, it was argued, were fulfilled and that the disciplinary authority or the appellate authority was not required to await the result of the criminal/vigilance case lodged against the petitioner. It was submitted that a departmental proceeding is different from the criminal case and there is a distinction between an opinion recorded in a criminal proceeding and one which is arrived at in a disciplinary proceeding. In criminal proceedings, conclusiveness of evidence is required to prove a charge but in a departmental/disciplinary



proceeding, the rule applicable is of preponderance of probability.

16. From the perusal of the records of this case, it is difficult to find out any connect between the charge against the petitioner and the evidence. Except for the vigilance report which is still pending consideration/adjudication before the criminal court, no evidence was led by the presenting officer. It is saddening to note that even the informant/Surendra Prasad Singh was not presented to prove the complaint. What can be gathered from the materials on record is that both the orders rest on the lodging of the criminal case.

17. It is also surprising that when the enquiry officer expressed his opinion that nothing could be stated about charges no. 1, 2 and 3 and charge no. 5 would also be dependent on the outcome of the criminal case, for differing with such an opinion, the delinquent/petitioner was required to be informed of the reason for such difference of opinion and his response ought to have been sought.

18. The seminal question therefore would be whether the allegation in the FIR, in the absence of any witnesses proving the same or even supporting the charge of demand of illegal gratification by the petitioner or absence of any witness to prove the recovery of the



tainted amount, would *ipso facto* be sufficient to prove a charge in a departmental proceeding.

19. In ***Roop Singh Negi Vs. Punjab National Bank & Ors.***, reported in **(2009) 2 SCC 570**, the Supreme Court has held that an enquiry officer in a departmental proceeding performs a quasi judicial function who has a duty to arrive at a finding upon consideration of materials brought on record. The evidence collected during investigation by an investigating officer could not be treated as evidence before the disciplinary authority without proof of such documents.

20. The order of the disciplinary authority and the appellate authority have to be supported by reasons as any order of dismissal and its affirmation has serious/severe consequences and those orders cannot be sustained, if they are not supported by reasons. Decision of the authority has to be on the basis of evidence which is legally admissible.

21. In the present case, the only evidence appears to be the FIR, verifier's note and the trap memorandum. In the absence of the proof of such documents, the same could not be used against the petitioner. This was the view of the enquiry officer as well but the disciplinary authority, for reasons which have not been explained in the order, differed with such opinion of



the enquiry officer. In that event, the petitioner was required to be intimated about the reasons of difference with the opinion of the enquiry officer.

22. This Court is conscious of the fact that there is a difference between a trial of a criminal case and manner of conducting a domestic proceeding. However in a case like this, it was of utmost importance that in the departmental proceeding, the element of demand of bribe money and its acceptance was compulsorily required to be proved. That not having been done, the orders impugned cannot be sustained in the eyes of law.

23. For the reasons aforesaid, the orders impugned are set aside.

24. The case is relegated to the stage of enquiry and the enquiry officer is directed to conduct a fresh enquiry against the petitioner after giving notice to him. Since the matter is an old one, it is expected that the enquiry shall be concluded within a period of five months from the date of its commencement. After the enquiry report, if it is found that the petitioner is guilty, necessary consequences will follow and the disciplinary authority shall take a call upon such report and the defence of the petitioner.

25. The petitioner shall furnish a copy of the order to the disciplinary authority within a period of three



weeks for him to remand the case to the enquiry officer. The entire exercise be concluded within a period of eight months.

26. With the aforesaid order/observation the writ petition is allowed.

27. Whether the petitioner shall be kept under suspension would be the decision of the disciplinary authority. Needless to state that if he is allowed to remain under suspension during the period of enquiry and if his service tenure still subsists, he shall be paid his subsistence allowance.

(Ashutosh Kumar, J)

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