

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.772 of 2017

=====

Sakaldeo Paswan, S/o Late Motilal Paswan, resident of Village:- Atardah,
P.S.- Sadar, Dist.- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretry, Department of Land Revenue, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The Circle Officer, Katra, Muzaffarpur.
5. The Circle Officer, Saraiya.

... .. Respondent/s

=====

Appearance :

For the Petitioner : Mr. Abhimanyu Sharma, Advocate.
Ms. Prakritita Sharma, Advocate
For the Respondents : Ms. Pallavi Priya for the AG

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 08-01-2019

Heard learned counsel for the parties.

2. The petitioner has sought quashing of the enquiry report dated 24.02.2015 (Annexure-4), the order dated 07.01.2016 (Annexure-5) passed by the District Magistrate, Muzaffarpur (respondent no. 3) whereby the departmental proceeding against the petitioner has been concluded by awarding punishment of demotion to a lower stage of pay scale, as well as quashing of the order dated 26.04.2016 (Annexure-6) passed in Service Appeal No. 17/2016 by respondent no. 2, the Divisional Commissioner, Tirhut Division, Muzaffarpur whereby the case of the petitioner was remanded to respondent no. 3 (the District Magistrate, Muzaffarpur) for making



modification in the punishment as only dismissal or punishment akin to dismissal could have been given on the charges against the petitioner as well as against the final order of the Collector dated 19.12.2016 which has been brought on record by way of Annexure-7 whereby the entire pension of the petitioner has been sought to be withdrawn till his life.

3. Learned counsel for the petitioner has submitted that all the orders including the charge memo are defective and not sustainable in the eyes of law.

4. In order to appreciate the contention made on behalf of the petitioner, it would be necessary to refer to the facts of this case, though briefly.

5. While the petitioner was working on the post of Halka Karamchari in Circle Office, Saraiya in the district of Muzaffarpur, a complaint was made by one Devendra Prasad Thakur stating that the petitioner, with *mala fide* intentions, and after accepting money from the other co-sharers of the property, had deliberately recommended for issuance of LPC to unauthorized persons. The aforesaid complaint led to the institution of a vigilance case which ultimately was quashed by the High Court on the ground of the same having been initiated without obtaining proper sanction.



6. Be that as it may, vide Memo No. 803 dated 09.06.2014, a decision was taken to subject the petitioner to departmental proceeding. For the aforesaid purpose, enquiry officer and presenting officer were appointed. Four charges were framed against the petitioner. It would be necessary to refer to those charges in order to appreciate whether the orders impugned in the present petition are liable to be interfered with.

7. The first charge pertained to the petitioner having left the name of Devendra Prasad Thakur (complainant) and his two sons while preparing the list of sufferers during the floods in the area. The second charge related to the petitioner having issued LPC of 7 acres and 17.5 decimals of land when the recommendee had only lesser land in his share. The ancillary charge is of the petitioner having accepted money for making such recommendation; thus, bringing him within the terms of Rule 3(I), (II) and (III) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

8. The petitioner responded to the aforesaid charges by stating that the recommendation made by him could not have passed off as LPC as for the issuance of LPC, counter signature of the Circle Officer was a must. Since the Circle Officer of the area did not counter-sign the aforesaid recommendation, the LPC was never issued. With



respect to the recommendation of LPC for 7 acres and 17.5 decimals of land to the recommendee, such recommendation was made on the basis of the disclosure made by the recommendee regarding the purchase of the aforesaid land, which factum was accepted and supported by the villagers. He further submitted that there was no evidence with respect to his having accepted any bribe money for such mistake to be committed under his pen and signature.

9. It appears from the records that the enquiry officer submitted his report on 24.02.2015 holding the charges no. 1 and 3 to be partially proved whereas charges no. 2 and 4 to be fully proved.

10. On the basis of the aforesaid report referred to above, respondent no. 3 (the District Magistrate, Muzaffarpur) asked for a second show cause from the petitioner which was supplied by him.

11. Learned counsel for the petitioner submits that without referring to the aforesaid reply or applying his mind over the factual aspects of the matter, the District Magistrate, Muzaffarpur awarded punishment of demotion to the lowest grade of pay scale by order dated 07.01.2016 (contained in Annexure-5). The petitioner in the meantime superannuated on 31.01.2016. In the appeal preferred by the petitioner, the appellate authority



(Commissioner, respondent no. 2) remanded the matter to the respondent no. 3 (the Collector, Muzaffarpur) for enhancing the punishment and inflicting the punishment of dismissal or anything akin to dismissal. The petitioner challenged the aforesaid orders but in the meantime, the Collector, on remand, by his order dated 07.01.2016 directed for withdrawal of the entire pension for the lifetime of the petitioner thereby holding him to be dismissed from the service.

12. Hence the present writ petition.

13. Mr. Abhimanyu Sharma, learned advocate for the petitioner has submitted that the charge itself was defective, as it was not in consonance with the provisions contained in Section 17 of the Bihar Government Servants (Classification, Contro & Appeal) Rules, 2005.

14. Section 17 of the aforesaid Rules specifies that where it is proposed to hold an enquiry against a Government servant, the disciplinary authority would be under an obligation to draw up the substance of imputation of misconduct or misbehaviour as a definite and distinct article of charge and a statement of the imputations of misconduct and misbehaviour in support of each article of charge has to be drawn up which shall contain the statement of all relevant facts including any admission or confession made by the Government servant and more



particularly the list of such documents by which and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

15. The charge which has been framed against the petitioner is devoid of any such details making it absolutely difficult for the petitioner to have raised any effective defence in support of his cause.

16. The further ground of assail is that the explanations offered by the petitioner was not taken into account. It was categorically and candidly submitted by the petitioner before the enquiry authority as well as the disciplinary authority that the evidence with respect to his having accepted any bribe money for recommending unauthorized person for LPC was absolutely missing, thereby making the charge of grave misconduct completely unsustainable in the eyes of law. That apart, the LPC about which clamour has been made all this while, was never issued but only recommendation was made. In the event of the Circle Officer not having countersigned the recommendation of the Halka Karamchari (the petitioner), it did not take the shape of LPC and therefore there was no revenue loss to the Government. Even while recommending, the petitioner had sufficient reasons to believe that the projection given by such recommendee was correct as documents pertaining to the purchase of the



aforesaid 7 acres and 17.5 decimals of land was furnished and the aforesaid fact of purchase by the recommendee was supported by the villagers. All these aspects were never taken into account.

17. Be that as it may, the Collector (respondent no. 3) in his wisdom accepted the report of the enquiry Officer which had recommended that two charges were fully proved, whereas two charges were partially proved and directed for reduction of the pay scale to the lowest stage by his order dated 07.01.2016.

18. What has really been challenged is this case is the order of the appellate authority which has set aside the order passed by the Collector and has remanded the matter to him with a specific direction to dismiss the petitioner.

19. It has been submitted that this is not the manner in which a case is remanded. What the appellate authority intended by the order was to ask the disciplinary authority to put a stamp of approval on the findings given by the appellate authority, leaving no scope for the disciplinary authority to examine the matter afresh and decide about the quantum of punishment.

20. The appellate authority, it has been urged, did not take into account the principle of proportionality of the sentence vis-a-vis the offences charged.



21. Learned counsel for the petitioner has submitted that unfortunately, the disciplinary authority, by reading the appellate/remand order in the way in which it was couched to be a direction to pass an order of dismissal or any punishment akin to dismissal since the petitioner had retired during the pendency of the appeal, directed for withdrawal of the pension for his lifetime. It has been submitted that the aforesaid punishment is much too harsh and belies the principle of proportionality in awarding sentence in a domestic proceeding.

22. This court is conscious of the fact that under Article 226 of the Constitution of India, normally a court would not interfere with the findings recorded in the departmental enquiry but that does not mean that under no circumstance can the courts interfere. The power of judicial review would become a dead provision, if the court would only strive to see that the formalities under the rules are complied with.

23. For profit, this Court is tempted to quote from **Kuldeep Singh vs. Commissioner of Police & Ors.** reported in **(1999) 2 SCC 10:**

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the



enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

24. This Court is also of the view that neither the disciplinary authority nor the appellate authority applied their minds to the evidence available on record. There is no evidence with respect to the petitioner having accepted any bribe money for issuing LPC. There is no definiteness in the charges and the entire proceeding has been concluded only on the basis of the charges and the show cause reply. Even Devendra Prasad Thakur, on whose complaint, the criminal case was initiated which ultimately was quashed, was never examined. In fact, the attempt of the petitioner to get him examined for the purposes of cross-examining him also proved abortive. In **Nand Kishore Prasad Vs. the State of Bihar** reported in **AIR 1978 SC 1277**, it



has been held that a disciplinary proceeding before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the authorities must arrive at the conclusions on the basis of some evidence which points towards of the guilt of the delinquent and are not supposed to act on mere surmises and conjectures. For sustaining the charges against a delinquent, definite evidence has to be adduced and in the absence of the same, a person cannot be allowed to suffer the unqualified and unreasoned sentence.

25. For the aforesaid reasons, the orders passed by the disciplinary authority, the appellate authority and the order passed by the Collector, after remand from the appellate authority, are set aside.

26. The matter is remanded to the District Magistrate, Muzaffarpur (respondent no. 3) to give a hearing to the petitioner afresh, look into the explanations offered by him and consider the proportionality of sentence and only thereafter pass an order in accordance with law.

27. For the aforesaid, the petitioner would be required to file a representation before the respondent no. 2 along with a copy of this order within a period of four weeks from today. On receipt of such representation, the respondent shall look into the entire records and shall pass a fresh order in accordance with law after taking into



account the grounds raised/urged on behalf of the petitioner viz. that the charge is defective as being not in consonance with Rule 17(3) of the Bihar Government Servants (Classification, Contro & Appeal) Rules, 2005 and there being no evidence to come to a definite finding that the petitioner was guilty of the offence charged as also regarding the proportionality of the punishment vis-a-vis the offences levelled and charged and shall pass a reasoned order in accordance with law within a period of six weeks thereafter.

28. With the aforesaid direction, the petition is disposed off.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2019
Transmission Date	

