

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1813 of 2018

In
Civil Writ Jurisdiction Case No.9775 of 2016

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
 2. The Principal Secretary, Department of Mines and Geology, Govt. of Bihar, Patna.
 3. The Director-cum Joint Secretary, Department of Mines and Geology, Govt. of Bihar, Patna.
 4. The Additional Secretary, Department of Mines and Geology, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

Vyas Paswan, Son of Sri Baburam Paswan, Resident of Village-Malti, P.S.-
Asthamwan, District-Nalanda at Biharsharif.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Naresh Dikshit, Special P.P. (Mines). Mr. B.B. Tiwari, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Mukesh Kumar, Advocate Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-03-2019

Re: I.A. No. 9749 of 2018

Heard Shri Naresh Dikshit, Public Prosecutor
(Mines) for the appellants.

2. The appeal is reported to be delayed by 125
days.

3. We have considered the affidavit filed in support
of the delay condonation application and we find that sufficient



cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 9749 of 2018 stands allowed accordingly.

Re: L.P.A. No. 1813 of 2018

Learned counsel for the appellants urged that learned Single Judge has not taken notice of the material that was on record and found reference in the charges. The contention is that the conclusion drawn by the learned Single Judge, therefore, is incorrect.

2. It is further submitted that the Inquiry Officer found that the charges were proved, as a result whereof, loss of revenue took place, and in the absence of any satisfactory reply with regard to the withdrawal and deposit of amount, the charges stood proved and, therefore, the orders of punishment did not require any interference by the learned Single Judge. It is urged that the order of dismissal was founded on valid material and misconduct was clearly established.

3. It is also submitted that full opportunity was given to the respondent-petitioner that was availed of by him and it is after the reply given to the second show-cause notice



that the Disciplinary Authority finally came to the conclusion that he deserves to be dismissed.

4. Having heard the learned counsel, we find that admittedly there were charges against the respondent-petitioner for which an inquiry was held in order to ascertain the correctness of the status of the inquiry and after perusing the counter affidavit the learned Single Judge had summoned the records which were produced.

5. The learned Single Judge has categorically recorded a finding to the effect that on a query raised by the Court the answer given by the learned counsel was as follows:-

“On a query made from Mr. Lalan Kumar learned counsel for the Mining Department to verify from the records of the disciplinary proceedings as to whether any evidence either oral or documentary was led during the course of enquiry as canvassed by Mr. Singh, the answer is in the negative. Learned counsel on scanning through the disciplinary records, has not been able to contest the submissions advanced by Mr. Singh.”

6. The learned Single Judge further clearly indicated that the charge memo nowhere mentions the name of the witnesses. This is also evident from the perusal of the charge



memo, which is Annexure-5 to the writ petition. The allegations were made about certain documents apart from the three challans mentioned in the charge memo. Such documents had found reference in the charge memo but in the counter affidavit it is alleged that the respondent-petitioner was given opportunity to give full reply and produce evidence in his defence. This stand in the counter affidavit has been met with by the learned Single Judge in the following manner in the impugned judgment:

“While I have already noted the illegality in the charge memo drawn which neither mentions the name of the witnesses nor records any documentary evidence, the Enquiry Officer has been rather adventurous in recording his finding of guilt of the petitioner without bothering to remind the Presenting Officer of his obligation to lead evidence as mandated under Rule 17(14) of ‘the Rules’ which reads under:

“17 (14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the



Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

7. On the basis of the aforesaid findings, the learned Single Judge came to the conclusion that the fault lay on the Inquiry Officer in not holding the proceedings in the manner prescribed and this aspect was overlooked by the Disciplinary as well as the Appellate Authority. It is, therefore, clear according to the stand of the appellants themselves, that the proceeding that was held, was vitiated and, therefore, in such circumstances it was always open to the department to have held the inquiry from the stage of providing evidence, if it did exist.

8. From the above extracted findings of the learned Single Judge and also from the memo of appeal and the grounds taken, except for the challans that are referred to, no other evidence was led to support the charges regarding deposits or otherwise. Nonetheless, if there was any evidence, then inquiry ought to have proceeded after complying with the same but



instead, the matter was wrapped up by passing the order of dismissal and without any effective consideration thereof by the Appellate Authority. We, therefore, find that the learned Single Judge rightly allowed the writ petition due to procedural lapses, as indicated in the judgment, which this appeal fails to dislodge.

9. We were inclined to impose a cost of Rs. 50,000/- as this appeal which has been even though filed belatedly has been entertained by us, but on the request of the learned counsel who has assisted the Court, we refrain from imposing costs. The appeal is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Vikas

AFR/NAFR	
CAV DATE	
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