

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1102 of 2017

In

Civil Writ Jurisdiction Case No.345 of 2017

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1. The State Of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna
 2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
 3. The Additional Secretary, Department of Industries, Government of Bihar, Patna.
 4. The Under Secretary, Department of Industries, Government of Bihar, Vikash Bhawan, Patna.
 5. The Deputy Secretary, Department of Industries, Government of Bihar, Patna cum Conducting Officer.
 6. The Section Officer, Section 6(S) cum Presenting Officer, Department of Industries, Government of Bihar, Vikash Bhawan, Patna

... .. Appellants

Versus

Ram Chandra Singh Son of Late Shiv Narayan Singh Resident of Ramdiri,
P.S. - Matihani, District - Begusarai, Bihar

... Respondent

Appearance :

For the Appellants : Mr. Abbu Haider, SC 6 and
Mr. Ranjay Kr. Singh, AC to SC 6.
For the Respondent : Mr. Ranjeet Kumar, Advocate and
Mr. Krishna Chandra, Advocate

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 4th February, 2020.

Heard learned counsel appearing for the appellants as
well as learned counsel representing the sole respondent.

2. This Letters Patent Appeal has been preferred by the
appellants, who are State officials, for quashing the order dated
17.03.2017, passed in CWJC No. 345 of 2017, whereby and
whereunder, the learned Single Judge, while allowing the writ



petition, has quashed the Notification (punishment order), contained in Memo No.1034 dated 29.2.1996 by which he was removed from the service under Rule 14(10) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules') as amended from time-to-time. Learned Single Judge has allowed the writ application with all consequential benefits to the respondent.

3. The facts, necessary to appreciate the claim of the appellants, are as follows:-

The respondent, while holding the post of General Manager, District Industries Centre, Bhagalpur, was served with charge of memo, bearing no. 57 dated 16.07.2014, *inter alia*, containing allegations in respect of irregularities committed in execution of the Micro Small Enterprises Scheme (hereinafter referred to as 'the MSE Scheme'). As per the allegation, 19 applications, filed under the MSE Scheme for extending loan in respect of small enterprises, were found to be an act of fraud and the charge memo while pin pointing allegations against one Rajiv Kumar Gupta and the Branch Manager of Madhya Bihar Gramin Bank, Oijaw, Nalanda also ropes the respondent for processing of those applications in the capacity of the General Manager, District Industries Centre. It is pertinent to mention here that the said



charge memo relies upon a report of District Panchayat Raj Officer, bearing no. 472 dated 07.04.2012, as well as the complaints filed by the local villagers, are annexed with the memo of charge. It is upon the aforesaid memo of charge that Industries Department, vide memo no. 564 dated 06.02.2015, initiated the disciplinary proceeding against the respondent under 'the CCA Rules' and the Deputy Secretary, Industries Department was appointed as 'Conducting Officer', while the Section Officer was appointed as the 'Presenting Officer'. The respondent filed his reply contesting the allegations as lacking in foundation. The enquiry report was submitted upholding the charge. The respondent was served with second show-cause notice, which was responded by him but the explanation offered by the respondent was rejected and the order of removal has been issued.

4. Learned counsel for the appellants has assailed the impugned order mainly on the ground that the learned Single Judge has failed to appreciate the fact that in the departmental proceedings, under Articles 226 and 227 of the Constitution of India, meticulous examination of the evidence is impermissible as the proceedings is summary in nature and is based upon preponderance of probability as against proof beyond reasonable doubt. In this connection, he relies on a decision in the case of



Lalit Popli vs. Canara Bank and ors. reported in (2003) 3 SCC 583, particularly, paragraphs 16, 17 and 18) and **the State of Bihar vs. Murlidhar Jena**, reported in AIR 1963 SC 404.

5. Learned counsel for the appellants has further contended that the learned Single Judge also erred in exercising the jurisdiction as while quashing the Notification (punishment order), contained in Memo No.1034 dated 29.2.1996 and allowing the consequential benefits to the respondent, liberty has not been given to the appellants to move afresh against the respondent in the departmental proceedings. It is further submitted that from the report of the District Panchayat Raj Officer as well as the complainant, it is apparent that it was the respondent, who being General Manager of the District Industries Department, processed the entire applications of the villagers, and on his endorsement, loans were sanctioned by the bank which never reached to the applicants. It is further submitted that there was sufficient material in the shape of complaints filed by the villagers as well as of the District Panchayat Raj Officer on the basis of which charges were found to be proved and the petitioner was held guilty.

6. *Per contra*, learned counsel for the respondent has submitted that the learned Single Judge, after taking into consideration the entire facts and circumstances, has rightly



allowed the writ application and set aside the order dated 17.03.2017. He further submits that the learned Single Judge rightly came to the conclusion that the finding of guilt is based on no evidence. He further contended that only cogent material before the enquiry officer was that the report of the District Panchayat Raj Officer as well as complaints filed by the 19 applicants (villagers), but surprisingly, neither the District Panchayat Raj Officer nor the applicants were examined by the department during course of enquiry. It is further submitted that the complainants while making allegation against Rajiv Kumar Gupta as well as General Manager Gramin Bank did not whisper anything against the petitioner/respondent. He further submits that in spite of the finding of District Panchayat Raj Officer to the effect that the signature of General Manager is doubtful as the same is different, the same has not been looked into by the Enquiry Officer. It is further submitted that mere production of documents is not enough and contents of documentary evidence has to be proved by examining witnesses. In support of his submission, learned counsel for the respondent has placed reliance upon the judgements reported in the case of **Rup Singh Negi vs. Punjab National Bank**, reported in (2009)2 SCC 570, para 14 & 15; **State of**



Uttar Pradesh and others Vs. Saroj Kumar Sinha, reported in **(2010)2 SCC 772, para 25,27,28,30 & 31.**

7. In sum and substance, learned counsel for the respondent submits that in this case neither oral evidence was produced nor documents were proved, as such, the same cannot be taken into consideration to conclude that the charges were proved against the delinquent. It is further contended that in absence of there being any cogent and admissible material before the Enquiry Officer which is simply based on the enquiry report of the District Panchayat Raj Officer and complaints of villagers, learned Single Judge has rightly allowed the writ application and set aside the Notification contained in Memo no. 1034 dated 29.2.2016. He submits that thus taking into consideration the entire facts and circumstances of the case, no interference is required by this Court.

8. Having heard learned counsel for the parties and having gone through the materials on record, I am of the view that the learned Single Judge has rightly allowed this writ application and set aside the impugned order. No doubt, in a proceedings under Articles 226 & 227 of the Constitution of India, the scope of the judicial review by the High Court is very limited. Meticulous examination of the evidence in a departmental proceedings is not



required to be proved like a criminal trial, i.e, beyond all reasonable doubt. However, indisputably, a departmental proceeding is a quasi-judicial proceedings. The Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. The departmental proceeding is a quasi-judicial proceeding and the charges levelled against the delinquent must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The question which is required to be seen is that whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. Reliance is placed on the decision in the case of **Moni Shankar Vs. Union of India**, reported in (2008) 3 SCC 679, **Narinder Mohan Arya Vs. United India Insurance Co. Ltd**, reported in (2006) 4 SCC 713, and **M.V.Bijlani Vs. Union of India**, reported in (2006) 5 SCC 88.



9. In the instant case, though the charge memo relies upon a report of the District Panchayat Raj Officer as well as the complaints filed by the local villagers. However, neither any villager nor District Panchayat Officer turned up to prove the charges. Thus, the findings of the Enquiry Officer solely rests on the documents which were never proved by the department and the learned Single Judge has rightly observed that it is case of no evidence. In this regard, reliance is placed on the decision of the Hon'ble Constitution Bench in the case of the **Union of India Vs. H.C.Goel**, reported in **AIR 1964 SC 364**. Judgment rendered in the case of **Kuldeep Singh Vs. Commr. Of Police** reported in **(1999) 2 SCC 10** holds as follows:- "Normally, the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. Furthermore, from perusal of the findings of the District Panchayat Raj Officer, it is clear that the Disciplinary Authority himself has accepted that though the signature of the Assistant and the Industry Extension Officer on the application forms, matches their signature but the signature of the General Manager is different which indicates that the



Disciplinary Authority has himself doubted the signature of the General Manager (the respondent).

10. So far as the second contention of the learned counsel representing the appellants is concerned, there is no absolute rule that in every case when the order of punishment is overturned on the finding that the inquiry was not properly conducted, the court must remit the matter back to the disciplinary authority to conduct the inquiry from the point it stood vitiated. In this regard, reliance is placed on the decision in case of **Anant R. Kulkarni Vs. Y.P. Education Society**, reported in **2013 (3) PLJR (SC) 106**, in which it has been held that the gravity of delinquency and the magnitude of misconduct alleged against the delinquent employee should be examined by the Court. Their Lordships have further ruled that “it is always open for the courts in such a case to examine the case on merits as well, and in case the court comes to the conclusion that there was in fact, no substance in the allegations, it may not permit the employer to hold a fresh inquiry. Such a course may be necessary to save the employee from harassment and humiliation.”

11. Considering the facts and circumstances of the case as also in the light of law laid down by the Hon’ble Apex Court in the aforesaid cases, I hold that the prayer for remanding the matter



back to the Disciplinary Authority for fresh consideration, is unwarranted and uncalled for.

12. In view of the aforesaid facts and circumstances, I do not find any infirmity, irregularity or perversity in the impugned order. The learned Single Judge has, rightly after taking into consideration the entire facts and circumstances, passed the order. The appeal is devoid of merit and accordingly, the same stands dismissed.

(Prabhat Kumar Singh, J)

Hemant Kumar Srivastava, J:- I agree.

(Hemant Kumar Srivastava, J)

Shashi

AFR/NAFR	AFR
CAV DATE	17 th January, 2020.
Uploading Date	04.02.2020.
Transmission Date	

