

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2800 of 2017

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Praveen Kumar S/o Dr. Devendra Prasad Resident of Mohalla- Bhaisasur
Ranchi Road, Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Government of India, Department of Defence Production, New Delhi
2. The D.G.O. F. and Chairman, Ordnance Factory Board, 10A, S.K. Bose Road, Kolkata-700 001
3. The General Manager, Ordnance Factory, Nalanda, (Biharsharif).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Hemant Kumar Karan,
Mr. Jayant Kumar Karan, Advocates
For the Respondent/s : Mr. Raj Kamal, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 06-12-2021

This case has been listed for seeking some clarification
on a particular issue from the respondents.

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

“A. To set aside order dated 04.10.2016, passed by Ld. CAT, Patna Bench in O.A. No.63/2015, as contained in Annexure – P/8, whereby the case of petitioner, claiming imposition of erroneous punishment in Disciplinary Proceedings has been dismissed.

B. To set aside Order of Punishment, issued under the signature of Under Secretary to the Government of India, Department of Defence Production, Ministry of Defence vide No.13024/1/Vig/1/08/D(Vig.)-Vol.II Dated 30.08.2013, as contained in Annexure – P/6, imposing major punishment upon petitioner of “reduction to two stages lower in the time scale of Pay, for a period of 1 year, with further directions that

petitioner will not earn the increments of pay during this period but on expiry of this period the reduction will not have the effect of postponing future increments of his pay.

C. Any other incidental, consequential or other relief / reliefs, to which the petitioner is found entitled in the eye of law.”

Petitioner was proceeded departmentally for the charge that while he was posted in Ordnance Factory, he carried out the pre-dispatch inspection without operators manual. Further allegation is that he certified a Front Mounted Engine Crane as a rear mounted engine enabling M/s Escorts to get 90% payment for a product which should have been rejected. Petitioner was well aware of Vigilance Investigation and doubt about the front or rear mounting engine, however, he down played the requirement of rear mounting engine and recommended for acceptance of a front mounted engine crane as factory level recommendatory being Technical Evaluation Committee member.

Allegation against petitioner is that while he was posted in Ordnance Factory, Nalanda and was member of tender evaluation committee and was associated with procurement of 20 tonnes capacity mobile crane and one of the technical specifications was that the cranes should have “rear mounted engine”, however, petitioner facilitated procurement of a crane from M/S. Escorts which had a front mounted engine, although

on the same ground of front mounted engine, the offer of one of the bidders M/s. ACE was rejected. A three-men technical committee which included petitioner submitted an incorrect report that the crane procured are as per technical specifications of Notice Inquiry Tender.

Petitioner was served with a memo of charge dated 13.12.2019 which reads as follows:-

Statement of articles of charges framed against Shri Praveen Kumar, WM of Nalanda is as under:-

ARTICLE- I

Shri Praveen Kumar was grossly negligent in carrying out the pre-dispatch inspection since he carried out the inspection without Operator's Manual. Further, he certified a front mounted engine crane as a rear mounted engine thereby enabling M/S Escorts to get 90% payment for a product which should have been outright rejected.

ARTICLE-II

Shri Praveen Kumar was well aware of vigilance investigation and the doubts about the front or rear mounting of engine. Despite that Shri Praveen Kumar downplayed the requirement of rear mounting of the engine and recommended for acceptance of a front mounted engine crane as factory level recommendatory TPC member vide minutes dated 28-05-2008.

ARTICLE-III

By the above acts of omission and commission, Shri Praveen Kumar WM, OF Nalanda exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Government Servant in violation of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules 1964.

Along with memo of charge, 20 documents were enclosed based on which, charges were to be proved and two departmental witnesses were to be examined.

Inquiry officer as well as presenting officer were appointed by the disciplinary authority to enquire into the charges framed against the petitioner and same was conducted under Rule 14 of the CCS (CCA) Rules, 1965 and completed on 15.01.2011 and inquiry officer submitted his inquiry report on 18.4.2011 in which charges framed against the petitioner were found not to be proved.

The inquiry officer found the charges not to be proved, however, disciplinary authority differed with findings arrived by Inquiry Officer and gave tentative reasons for differing with the findings of inquiry officer on the basis of materials available in the inquiry report.

In the case of **Punjab National Bank & Ors. vs. Kunj Behari Misra**, since reported in (1998) 7 SCC 84, it has been held that whenever the disciplinary authority disagrees with the findings recorded by enquiry officer on article of charges, then before it records its own findings on such charge, it must record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it records its findings.

The report of the Inquiry officer containing its findings will have to be served and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the findings as recorded by Inquiry Officer in favour of delinquent. The Hon'ble Apex Court proceeded to observe that the principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

A disagreement note against inquiry officers report was served upon petitioner on 8.1.2013 in which the disciplinary authority differed with the findings of inquiry officer and on the basis of materials available in inquiry report, found the charges to be proved against the petitioner, against which, petitioner submitted his representation to the disciplinary authorities on 22.03.2013 and, thereafter, on consideration of inquiry report, disagreement note and representation filed by petitioner against disagreement note, found the charges to be proved and passed order of punishment.

The CVC also concurred with the view of disciplinary authority that charges were proved and major penalty should be

awarded to the delinquent.

The learned tribunal has held that no malice, as alleged, could be established by the petitioner and moreover the proceeding was conducted against all the officers including the then General Manager who was involved in this procurement. The Tribunal has further held that disciplinary authority after proper appreciation of evidence on record, and applying his independent mind, has come to a tentative finding that charges were proved and he has given tentative reasons to differ with the finding of inquiry officer and, as such, there was no illegality committed by the disciplinary authority while differing with the findings of the inquiry officer based on evidence on record and came to independent finding after due appreciation of materials available on record that the charges are established against the petitioner.

The Tribunal has also examined the case on merits and held that the key aspect to be examined was whether there was a deviation from technical specification which the petitioner along with other officers tried to underplay in order to favour M/S Escorts. Three firms had submitted offers in response to the tender notice. The factory level technical evaluation committee recommended for rejection of offer of M/S ACE on the ground

that it had offered front mounted engine as against the requirement of rear mounted engine and thereafter Technical Evaluation Committee recommended to open offers of remaining two firms M/s Tractor India Ltd. and M/s Escorts Constructions Equipment and thereafter Ordnance Factory, Nalanda deputed a team of three members including petitioner for pre-dispatch inspection at the premises of M/s Escorts and thereafter same was procured and received in the factory and 90% payment was made. However, on complaint a technical committee was constituted which included petitioner which gave an incorrect report that procurement of crane was as per technical specifications. M/s Escorts had not submitted operators manual alongwith crane which was mandatorily required and subsequently M/s Escorts forwarded a revised manual only as a cover up and the word front was replaced with rear and after constitution of high level committee, it was found that the crane procure had front mounted engine and not rear mounted engine as per technical specification leading to departmental proceedings against three officers of Nalanda Ordnance Factory including petitioner.

It was lastly argued that it was a case of mere negligence in performance of duty or error of judgment in discharge of duty

and would not constitute misconduct. However, from the charges, as framed and established by the department, it does not appear that it is a case of mere negligence or error of judgment but a well planned conspiracy to procure cranes in connivance with M/s Escorts which did not fulfil the technical specifications and to cover up said misconduct by submitting a vague and incorrect report to justify such procurement.

Having gone through the nature of allegations and finding recorded by the inquiry officer and disciplinary authority as well as perusing the order passed by the Tribunal which has threadbare considered the charges framed against petitioner as well as explanation and defence put forth by the petitioner, did not find the departmental proceeding to be vitiated on any account and the punishment imposed not to be disproportionate to the gravity of proved charges.

It is now settled preposition of law that courts will not act as appellate authority and reassess the evidence led in the departmental proceeding nor can interfere on the ground that another view is possible based on the materials available on record. If inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of evidence will not be ground

for interfering with the findings in the departmental inquiries. Courts will not interfere with the findings of fact recorded in the departmental inquiries except where such findings are based on no evidence or where they are clearly perverse.

After going through the order passed by the Tribunal as well as considering the materials available on record, this Court does not find any error in the decision making process during conduct of departmental proceeding in which charges were found to be proved and punishment awarded. This Court also does not find violation of principle of natural justice or violation of any statutory regulations or rules while holding disciplinary proceeding.

This Court does not find any error or infirmity in the order passed by the Central Administrative Tribunal, Patna, requiring any interference by this Court in its writ jurisdiction, accordingly, this writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-Ranjan

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