

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3032 of 2019

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Shyam Bihari Singh, aged about 57 years male, S/o Late Ganesh Singh
Resident of Village- Itahari, P.S. Itahari, Dist.-Buxar

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Food and Consumer Protection, Govt. of Bihar, Patna
3. The Managing Director, B.S.F.C. Bihar, Patna
4. The Deputy Chief of Administrative B.S.F.C. Patna
5. The District Manager, Bihar State Food Corporation, Bhojpur

... .. Respondents

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Appearance :

For the Petitioner : Mr. Dharendra Singh, Adv.
For the Respondents : Mr. Bijoy Kumar Sinha, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

9 06-07-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

2. When the matter is taken up today, the petitioner's counsel submits that the charge memo, based on which, the petitioner has been visited with the impugned order of punishment, affirmed by the appellate authority, is one and the same, for which, he was being proceeded against in the criminal case bearing Trial No. 781 of 2015 (Annexure- 5 to the writ petition). The allegation in the criminal trial as well as the departmental proceedings was defalcation of an amount of Rs. 206927.88/- while the petitioner was incharge seller in the



Mobile Van of the Bihar State Food Corporation at Ara. He submits that charges being substantially the same, the authority, while passing the appellate order dated 08-08-2018, should have taken into consideration the fact of petitioner's acquittal in the criminal trial based on the same charges. The petitioner, however, has not placed on record any material to suggest that he has claimed to be exonerated in the disciplinary proceedings on account of acquittal in the criminal trial.

3. There is no material in the pleadings for this Court to consider or arrive at a conclusion that based on facts the petitioner's case is covered by decision of the Apex Court in the case of ***G. M. Tank vs. State of Gujarat*** and others reported in ***(2006) 5 SCC 446***, wherein the Hon'ble Apex Court, considering the earlier judgment, has reiterated the law.

4. The petitioner was also required to assert before the authorities, that by virtue of his acquittal at the trial, he was required to be considered for clean exoneration in the departmental proceedings also. That, however, has not been done. The petitioner has not approached the authorities making out a case that judgment in the case of ***G.M. Tank*** (supra) is applicable in the facts and circumstances of the petitioner's case. The petitioner is allowed liberty to approach the Managing



Director, B.S.F.C., Bihar, Patna (Respondent No.3) with his plea for consideration of the petitioner's claim for benefit of the Apex Court judgment in the case of ***G.M. Tank*** (supra), being raised in the instant proceeding, which was not raised before the authorities.

5. The application is disposed of with liberty.

(Madhuresh Prasad, J)

shyambihari/-

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