

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.533 of 2019
In
Civil Writ Jurisdiction Case No.879 of 2017

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Chaudhary Nagmani Chakravarti Son of Late Dasai Chaudhary Resident of
Village-Marachi, P.S. Punpun, District-Patna

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna.
2. The Director- in - Chief, Health Services, Bihar, Patna.
3. The Regional Director Health Services, Patna Division, Patna
4. The Civil Surgeon Cum Chief Medical Officer Patna.
5. The Additional Director -Cum- Conducting Officer of the Department
Inquiry Health Services, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Ranjeet Kumar, Advocate
Mr. Ayush Kumar, Advocate
Mr. Shikhar Mani, Advocate
Mr. Kanishk Kaustubh, Advocate

For the Respondent/s : Mr. Anil Kumar Verma AC to (Aag9)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-12-2022

Instant LPA is by Chaudhary Nagamani Chakraborty
against the order of the learned Single Judge dated 02.04.2019



passed in CWJC No. 879 of 2019.

The appellant was involved in the alleged allegations relating to demand and acceptance of illegal gratification a sum of Rs. 5,000/-. He was subjected to parallel proceedings like disciplinary/criminal proceedings. Criminal proceedings are stated to be pending consideration as on today. In so far as disciplinary proceedings is concerned disciplinary authority placed the appellant under suspension on 10.03.2011 and it was revoked on 06.06.2011. Thereafter charge memo was issued on 10.06.2011. On 08.08.2011 inquiry report was submitted. At that point of time the Disciplinary Authority proceeded to initiate fresh inquiry in framing article of charges on 17.02.2014 which was the subject matter of CWJC No. 6999 of 2014, since there was no interim order in respect of staying the operation of second inquiry dated 17.02.2014 the Disciplinary Authority proceeded with the inquiry and concluded in imposition of penalty of dismissal from service on 29.05.2014. After taking note of dismissal order dated 29.05.2014, CWJC No. 6999 of 2014 was disposed of on 02.05.2016 without passing any order on merit, further the appellant has also not insisted for passing order on merit and he has also not invoke LPA remedy against the order dated 02.05.2016. On the other hand he has



surrendered his right before the Appellate Authority in questioning the dismissal order dated 29.05.2014. Appellate Authority proceeded to affirm the order of the disciplinary authority dated 29.05.2014 on 25.11.2016.

Feeling aggrieved and dissatisfied by the dismissal order and Appellate Authority's order appellant invoke remedy under writ jurisdiction in filing CWJC No. 879 of 2017.

Learned Single Judge proceeded to dispose the aforesaid writ petition while remanding the matter to the Disciplinary Authority to hold inquiry and conclude the same within a period of eight months. The appellant had the benefit of interim order in so far as, order of *status quo* with reference to order of the learned Single Judge dated 02.04.2019, in the present LPA.

Learned counsel for the appellant vehemently contended that it is not a case for remanding the matter to the Disciplinary Authority to commence the inquiry and conclude within a period of eight months for the reasons that it is a case of no evidence, none of the witnesses have been examined and cross-examined in the departmental inquiry and it is not a technical issue and substantial issue, therefore, the learned Single Judge has committed error in remanding the matter to



commence the inquiry and conclude within a period of eight months. Hence, order of the learned Single Judge is to be set aside to the extent of remanding the matter to the Disciplinary Authority and its conclusion.

Per Contra learned counsel for the respondent resisted the aforesaid contentions and submitted that there is no lacuna in the order of the learned Single Judge dated 02.04.2019 passed in CWJC No. 879 of 2017 so as to interfere by this LPA Bench. It is submitted that remanding the matters in respect of holding inquiry is that it is a case of no evidence adduced on behalf of the prosecution witnesses in disciplinary proceedings in terms of Sub Rule 5 of Rule 17 of Bihar, CCA Rules 2005 (for short Rules 2005), therefore it is not a remand of with reference to substantial ground. On the other hand, it is on technicality in not adhering to the statutory provision under Rules 2005, hence no interference is called for.

Heard the learned counsel for the respective parties, the appellant was alleged to have involved in demand and acceptance of illegal gratification for a sum of Rs. 5000/-. Parallel proceedings have been initiated. Criminal proceedings is still pending consideration. In the disciplinary proceedings charge memo was issued on 10.06.2011 and it has not attained



finality either in imposition of penalty or in exoneration. On the other hand Disciplinary Authority proceeded to initiate fresh inquiry while framing article of charges on 17.02.2014. The appellant has questioned the validity of the initiation of second inquiry dated 17.02.2014 in CWJC No. 6999 of 2014 and it was disposed on 02.05.2016. It is to be noted that appellant has not insisted for passing order on merit in so far as, challenge to the second inquiry dated 17.02.2014. On the other hand, he has surrendered his right to the disciplinary proceedings initiated for the second time as is evident from the record that he had filed appeal against the order of dismissal dated 29.05.2014. Further, it is to be noticed that order dated 02.05.2016 passed in CWJC No. 6999 of 2014 has attained finality among the respective parties in so far as challenge to the second inquiry dated 17.02.2014. Therefore, what remains is validity of the dismissal order dated 29.05.2014 and Appellate Authority's order dated 25.11.2016. In this backdrop question for consideration is whether learned Single Judge has committed an error in remanding the matter to the disciplinary authority with reference to the fact that prosecution witnesses on behalf of the department have not adduced the evidence and no witnesses were cited. Perusal of the records, it is evident that from the



inception namely the charge memo issued on 17.02.2014 is not supported by statement of imputation, list of documents and list of witnesses. The disciplinary authority has failed to take note of provisions of CCA Rules, 2005 so also the inquiring and appellate authority, therefore, remanding the matter by the learned Single Judge to commence inquiry afresh and conclude within a period of 8 months is on technicality, in other words Disciplinary Authority has failed to follow various provisions of CCA Rules, 2005. In the result the contention of the learned counsel for the appellant that learned Single Judge has taken that it is a case of no evidence is not on substantial ground on the other hand violation of various provisions of CCA Rules, 2005 by the disciplinary inquiry and appellate authority at various stages they were bound by CCA Rules 2005 how they have to function. No doubt, it is almost more than one decade with reference to the alleged allegations relating to demand and acceptance of illegal gratification at the same time one cannot ignore the seriousness of the alleged charge relating to demand and acceptance of illegal gratification. Apex Court time and again held that in respect of alleged serious allegations/charges are concerned in such matters, matter requires to be remanded, in other words, if the penalty order is set aside on technicalities,



it is a case for remand and inquiry to be concluded within stipulated period of time.

Apex Court in the case of *ECIL v. B. Karunakar*, (1993) 4 SCC 727 read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others* reported in (2011) 5 SCC 142 and the *State of Uttar Pradesh and Others vs. Prabhat Kumar*, 2022 LiveLaw (SC) 736 (para 46 to 50) it is held as under:-

46.K. RAMASWAMY, J.— I have had the benefit of reading the draft judgment of my learned brother P.B. Sawant, J. While broadly agreeing with his interpretation of Article 311(2), I disagree with his conclusion that the application of Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] ratio to him and his companions was *per incuriam*. To deal with certain aspects which would flow from our judgment in this batch too, I feel it expedient to express my views. Since my learned brother has critically examined in extenso the historical development and the interpretation given to Section 240(3) of the Government of India Act, 1935 and Article 311(2) of the Constitution of India vis-a-vis the Constitution (Fifteenth Amendment) Act, 1963 and the Constitution (Forty-second Amendment) Act, 1976, I would desist to tread the path once over. For continuity of thought, I would broadly sketch the scope of the phrase “reasonable opportunity of being heard” at an inquiry into a charge and the action proposed to be taken against a



member of a civil service or holder of a civil post engrafted in Article 311 of the Constitution and the concept of the principles of natural justice embedded as its part at an inquiry into the charges against an employee or workman/officer of an authority under Article 12 of the Constitution, a workman/officer of an employer compendiously called “the delinquent” as the same principles are applicable to them all. Before doing so it is necessary to state facts in brief in some sample cases.

47. The respondent B. Karunakar in the main appeal while working as a Senior Technical Officer, was served on December 27, 1986 with a Memorandum of Charges setting out the misconduct said to have been committed by him, with details thereof that he had unauthorisedly sold T.V. sets. The enquiry officer appointed in this behalf conducted the inquiry, recorded the evidence, giving him adequate opportunity to rebut the evidence. On March 13, 1987 the enquiry officer submitted his report finding that the respondent acted fraudulently and dishonestly in conducting the business of the appellant company and acted thereby prejudicially to the interest of the company. On its consideration and agreeing with the findings, the disciplinary authority, by proceedings dated April 27, 1987, removed him from service and on appeal it was confirmed. The Single Judge of the Andhra Pradesh High Court dismissed his writ petition but on appeal, the Division Bench, by judgment dated March 29, 1991 relying on the Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991



SCC (L&S) 612 : (1991) 16 ATC 505] allowed it. In this case the rules framed by the company do not require the supply of the copy of the report to the delinquent. In Civil Appeal No. 4148 of 1991 Union of India v. A.J. Shah the respondent, while working as T.T.E. in S.E. Railway, was found to have collected excess amounts from the passengers. The enquiry officer, after giving an opportunity to the respondent, submitted his report and the disciplinary authority agreeing with the findings of guilt recorded by the enquiry officer, reverted him to the grade of Ticket Collector in the pay scale of Rs 950-1500 fixing his initial pay as Rs 950. The CAT at Cuttack set it aside as the enquiry report was not supplied to him holding that it resulted in denial of opportunity and violates the principles of natural justice. In Civil Appeal No. ... of 1993 (arising out of SLP (C) No. 13813 of 1992) State of M.P. v. A. Sheshagiri Rao the respondent, while working as Executive Engineer, was suspended by order dated July 21, 1983. On October 21, 1983 he was served with a charge-sheet. After conducting an inquiry the enquiry officer submitted his report and the disciplinary authority while agreeing with the findings of guilt, reverted him by an order dated October 21, 1987 as an Asstt. Engineer. It was set aside by the Tribunal, holding that non-supply of the enquiry report was denial of opportunity under Article 311(2) and it violates the principle of natural justice. In C.A. No. ... of 1993 (arising out of SLP (C) No. 17484 of 1991) Union of India v. Mohammed Naimulla the respondent was working as an electrical fitter. On March 11, 1983 a



charge-sheet was issued. The enquiry officer had given him reasonable opportunity and after completing the inquiry submitted his report that the charges were proved against the respondent. The disciplinary authority by an order dated April 29, 1988 removed him from service. On appeal, it was confirmed. The Tribunal set aside the order. In all these cases the enquiry report was not supplied. In C.A. No. 302 of 1992, Bank of India v. Vinodchandra Balkrishan Pandit the respondent was served with a charge-sheet on August 10, 1982 accusing him of having committed misconduct by taking illegal gratification in his discharge of official duties. The enquiry officer after giving full opportunity found him to have received illegal gratification in the stated instances and was guilty of the charges. The disciplinary authority agreed with the findings of the enquiry officer; removed him from service by supplying him a copy of the enquiry report along with the order of removal as required under Regulation 9 of the Bank of India Employees (Disciplinary Appeal) Regulations, 1976. Following the Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the order was set aside. These facts have been stated with a view to illustrate that Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] ratio was applied by the Courts/Tribunals to the cases where rules are either absent, or statutory rules were amended after Constitution (Forty-second Amendment) Act, 1976, omitting the obligation to supply a copy of the enquiry report. The Banking Regulations enjoins to supply it along with



the order when served.

48. It is settled law that the disciplinary authority, by whatever name called, has power and jurisdiction to inquire into the misconduct by himself or by his delegate and to impose the penalty for proved misconduct of a delinquent. It is a condition precedent that the charge-sheet, statement of facts in support thereof and the record, if any, need to be supplied to the delinquent. The record, if bulky and not having been supplied, an opportunity for inspection and to have copies thereof at his expenses, be given as per rules, regulations or standing orders. The delinquent must be given reasonable opportunity to submit his written statement. In case he denies the charges and claims for inquiry, disciplinary authority or the enquiry officer, if appointed, shall conduct the inquiry. The department should examine the witness or prove the documents to establish the charge of the imputed misconduct. The delinquent shall be given an opportunity to cross-examine the witnesses, if he so desires to examine himself and to examine his witnesses in rebuttal. After giving an opportunity of being heard the enquiry officer should consider the entire records and the evidence and should submit his report to the disciplinary authority with reasons and findings or conclusions in support of the proof or disproof of each of the charge or charges, as the case may be. He shall transmit the record of inquiry and his report to the disciplinary authority.

In Khem Chand v. Union of India [1958 SCR 1080 : AIR 1958 SC 300 : (1958) 1 LLJ 167] it was held thus:



49. *“If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.”*

50. *In Bachhittar Singh v. State of Punjab [AIR 1963 SC 395 : 1962 Supp (3) SCR 713] another Constitution Bench held that the departmental proceedings taken against the*



Government servant are not divisible into two compartments. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges raised against the Government servant have been established or not and the second is reached only if it is found that they are established. That stage deals with the action to be taken against the Government servant concerned. Therefore, from the stage of service of the charge-sheet till the imposition of punishment was considered to be a continuous whole process consisting of the proof of the charge and imposition of the punishment on the proved charge. In Dr M.N. Dasanna v. State of A.P. [(1973) 2 SCC 378 at 383 : 1973 SCC (L&S) 521] a Bench of three Judges held that the inquiry consists of recording evidence, admitting documents and generally completing the records upon which the finding would be based. It is only after all the material has been placed on record by both the sides, the stage of recording a finding would arise. In Khardah Co. Ltd. v. Their Workmen [(1964) 3 SCR 506 : AIR 1964 SC 719 : (1963) 2 LLJ 452] a Bench of three Judges held that it is the duty of the enquiry officer to record clearly and precisely his conclusions and to indicate briefly the reasons therefor, so that the Industrial Tribunal can judge whether they are basically erroneous or perverse. In that case since the reasons were not specifically recorded the Court quashed the order of termination. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] another Constitution Bench held that the enquiry report along



with the evidence recorded constitute the material on which the Government has ultimately to act, i.e. only the purpose for the inquiry held by the competent officer and the report on which he makes as a result of the said inquiry. The non-supply of the copy of the report contravenes the principle of reasonable opportunity envisaged under Article 311(2) and also violates the principle of natural justice. If the dismissal order is based on no evidence then the order of dismissal is clearly illegal. In State of Maharashtra v. B.A. Joshi [(1969) 1 SCC 804 : (1969) 3 SCR 917] this Court held that the report of the enquiry officer is bound to influence the disciplinary authority; to deprive the plaintiff of a copy of the report was a handicap to the delinquent as he was not knowing what material had influenced the disciplinary authority. Therefore, it was held that it would be in a rare case in which it can be said that the Government servant was not prejudiced by the non-supply of the report of the enquiry officer. Accordingly the finding of the High Court holding that non-supply of the report violates the principles of natural justice and the statutory provision was upheld by a Bench of three Judges. In State of Gujarat v. R.G. Teredesai [(1969) 2 SCC 128 : (1970) 1 SCR 251] a Bench of three Judges held that the enquiry officer was under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental inquiry was held. Its function was merely to conduct the inquiry in accordance with the law and to submit the record along with his findings or conclusions on the delinquent. If the enquiry



officer has also made recommendation in the matter of punishment, that is likely to affect the mind of the punishing authority with regard to the penalty or punishment to be imposed on such officer, it must be disclosed to the delinquent. Since such recommendation form part of the record and constitutes appropriate material for consideration, it would be essential that the material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the enquiry officer is to enable the delinquent to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe.

Recently, Apex Court in the case of Prabhat Kumar Vs. State of U.P. reported in **2022 LiveLaw (SC) 736** reiterated the principle laid down in the case of ***ECIL v. B. Karunakar, (1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others*** reported in **(2011) 5 SCC 142**.

In the light of these facts and circumstances, it is a case for remand to commence inquiry strictly in accordance with CCA Rules 2005. The Disciplinary Authority is hereby directed to examine the CCA Rules thoroughly and guide inquiring authority and take appropriate action to see that each



and every provision which is attracted under in CCA Rules, 2005, the same shall be complied in holding inquiry and completion. We intends to modify the time limit stipulated by the learned Single Judge as it has lapsed during the pendency of the present LPA.

Disciplinary Authority is hereby directed to commence the inquiry from the defective stage and complete the same within a period of six months from the receipt of this order.

In the meanwhile the disciplinary authority is hereby directed to take a decision as to whether the appellant shall be entitled to be reinstated or he should be placed under suspension or not? In the light of the Apex Court's observation made in the cited decisions. Such decision shall be taken by the Disciplinary Authority within a period of two months from the date of receipt of this order.

The interregnum period from the date of initial dismissal order dated 29.05.2014 till passing of fresh order in the disciplinary proceedings is required to be regulated in accordance with the relevant provision of Bihar Service Code such order/decision shall be taken by the Disciplinary Authority within a period of one month from the date of passing a fresh



order in the disciplinary proceedings afresh. To the above extent
order of the learned Single Judge is modified and LPA is
disposed of.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

aditya/minu

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2022
Transmission Date	NA

