

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.168 of 2018

In

Civil Writ Jurisdiction Case No.14540 of 2014

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1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, New Secretariat, Vikash Bhawan, District – Patna.
 2. The Commissioner, Excise and Prohibition Department, Govt. of Bihar-cum-Inspector, General of Registration, New Secretariat, Vikash Bhawan, District – Patna.
 3. The Deputy Commissioner, Patna-cum-Magadh Division, Excise and Prohibition Department, Govt. of Bihar, District – Patna.
 4. The Assistant Commissioner, Excise and Prohibition Department, Govt. of Bihar, District Patna.
 5. The Assistant I.G. of Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

Vijay Kumar Chaurasia S/o Late Anuplal Chaurasia, R/o Sanjay Sadan, Post Office Road, Punaichak, P.S. Shastri Nagar, District Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Aditi Hansaria, Advocate.
For the State	:	Mr. Sriram Krishna, AC to SC-11.
For the Accountant General	:	Mr. Vivekanand Kumar, Advocate.
For the Respondent	:	Mr. Rakesh Kumar Samrendra, Advocate.
		Mr. Manager Sah, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-11-2022



On 03.11.2022, following order was passed.

“Heard the matter for sometime.

We feel it is a case to modify the learned Single Judge Order in so far as remanding the matter to the disciplinary authority for the reasons that it is a case of alleged demand and acceptance of illegal gratification.

Further, in the light of **Managing Director, ECIL V. B. Karunakar** reported in (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**, matter requires remand to the disciplinary authority.

In order to give opportunity to the learned counsel for the respondent, relist this matter on 07.11.2022. If there is no representation on behalf of the respondent, matter would be decided with the available records.”

2. Today learned counsel for the respondent to overcome the aforesaid decisions cited a Constitution Bench decision in the case of **Union of India v. H.C. Goel**, reported in **AIR 1964 SC 364** (Para 2, 20 and 23) to distinguish the aforesaid decisions.

3. Brief facts of the case are that Respondent was appointed as Sub-Inspector of Excise in the Excise and



Prohibition Department, Govt. of Bihar, Patna in the year 1983. He has earned promotion to the post of Excise Inspector in the year 2006. He was alleged to have involved in demand and acceptance of illegal gratification, a sum of Rs. 5000/-. In this regard, vigilance police station, Patna registered a complaint and trap was led on 02.11.2007. In the result, he was arrested in Vigilance P.S. Case No. 122 of 2007. He was placed under suspension with effect from 02.11.2007, the date on which he was arrested on 14.11.2007. He was charge sheeted in a departmental proceedings on 09.12.2007. Thereafter, he was released on bail on 14.05.2008. Consequently suspension was revoked on 02.12.2008.

4. The Inquiry Officer submitted report of exonerating the petitioner from the alleged charge on 29.11.2012. The respondent attained age of superannuation and retired from service on 30th November, 2012. The disciplinary authority proceeded to issue second show cause notice on 17.02.2014 while converting the disciplinary proceedings lodged under **C.C.A. Rules, 2005** to that of **Rule 43(b) of the Bihar Pension Rules**. On 27.06.2014, respondent was punished to the extent of withholding of 100% pension pursuant to the disciplinary proceedings initiated under C.C.A. Rules read with



Rule 43 (b) of Bihar Pension Rules. Feeling aggrieved and dissatisfied with the order of punishment, respondent invoked remedy under Article 226 of the Constitution in C.W.J.C. 14540 of 2014.

5. The learned Single Judge allowed the petition on 02.11.2017. Paragraph Nos. 3 to 5 reads as under:

“3. Brief facts, which is relevant for disposal of this writ petition, is that while the petitioner was posted as Excise Inspector, the petitioner was arrested by the Vigilance Department on 02.11.2007 on the allegation of accepting bribe of rupees five thousand from complainant, Rajeev Ranjan, and a departmental proceeding was also initiated on the allegation that the petitioner was arrested while accepting bribe, the conduct of the petitioner amounts to misconduct, according to the Bihar Government Servants Conduct Rules, 1976. The Assistant Commissioner, Excise, Gaya, was appointed as Enquiry Officer and the Presenting Officer was also appointed. The Enquiry Officer submitted his report on 29.11.2012 (Annexure 7), holding that the Presenting Officer did not examine any witness arrayed in the charge sheet in order to prove the charge and, accordingly, the Enquiry Officer hold that the charge leveled against the petitioner has not been proved.

4. Upon receipt of the enquiry report, the disciplinary authority issued show cause calling



upon the petitioner to give second show cause as to why he be not suitably punished differing with the findings of the Enquiry Officer. The petitioner gave his detailed reply and in sum and substance stated that the disciplinary authority while asking second show cause did not give his point of difference with the findings of the Enquiry Officer on the evidence available on record and there is, in fact, no evidence on record to prove the charge against the petitioner. After perusal of the show cause, the disciplinary authority held the petitioner guilty of accepting bribe of rupees five thousand and the acts of the petitioner amount to gross misconduct according to the Bihar Government Servants Conduct Rules, 1976, accordingly, withheld hundred per cent pension of the petitioner.

5. The learned counsel for the petitioner submits that for inflicting major punishment, the procedure under Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 ((hereinafter referred to for the sake of gravity as, “the CCA Rules, 2005”). Sub rule 14 of Rule 17 of the CCA Rules, 2005 cast duty upon the Enquiry Officer to ask the Presenting Officer to present oral and documentary evidence. After closing the case of the Department, the Enquiry Officer is obliged to give opportunity to the employee to adduce oral and documental evidence in support of his case. After submission of the enquiry report under sub rule (23)(2) of Rule 17, the disciplinary authority



under sub rule (1) of Rule 18 of the CCA Rules, 2005, has got power to remit the case to the Enquiry Officer for further enquiry, if the disciplinary authority finds that the Enquiry Officer has not recorded any finding or has not made any enquiry on a particular charge. Under sub rule (2) of Rule 18, the disciplinary authority has got power to differ with the findings of the Enquiry Officer on the basis of the evidence, available on record. The Enquiry Officer, thereafter, shall cause the point of difference to be served on the charged employee along with the enquiry report asking the charge officer to give second show cause. The object of serving the point of difference along with the enquiry report is to enable the charged officer to point out that the findings of the Enquiry Officer is based on evidence or the same is not based on evidence. Similarly, the charged officer may also point out that the disciplinary authority has recorded the point of difference with the findings of the Enquiry Officer, but, there is no such evidence on record to record a point of difference with the findings of the Enquiry Officer.”

6. Perusal of the records, it is evident that on technicality the punishment order is warranted for setting aside, however, mere setting aside the penalty order by the learned Single Judge is not sufficient for the reasons that having regard to the alleged charge relating to demand and acceptance of



illegal gratification of a sum of Rs. 5,000/- and respondent was subjected to parallel proceedings like disciplinary and criminal proceedings. In so far as criminal proceedings is concerned it is still pending consideration.

7. Learned counsel for the respondent submitted that it is not a case for remand in the light of Apex Court decision in the case of Union of India v. H.C. Goel (supra). Para 2, 20 and 23 of the aforementioned judgment reads as under:

(2). The above two points arise in this way. The respondent, H. C. Goel, joined the Central Public Works Department on November 26, 1941, and in due course, he was selected for appointment in Class I post in or about 1945-46. In January, 1956, he was posted as Surveyor of Works at Calcutta. It appears that he felt that his seniority had not been properly fixed, and so, he had made a representation in that behalf to the Union Public Service Commission. He happened to go to Delhi about the middle of January, 1956. Then, he called on Mr. R. Rajagopalan, who was the Deputy Director of Administration, at his residence on January 19, 1956. His idea in seeing Mr. Rajagopalan was to acquaint him with the merits of his case. In the course of his conversation with Mr. Rajagopalan it is alleged that he apologised for not having brought 'rasagullas' for the children of Mr. Rajagopalan. Thereupon, Mr. Rajagopalan frowned and expressed his displeasure at the implied suggestion. A little later, during the course of the interview, it is alleged that the respondent took out from his pocket a wallet and from it produced what appeared to Mr. Rajagopalan to be a folded hundred rupee note. Mr. Rajagopalan showed his stern disapproval of this conduct, whereupon the respondent said 'No' and put the wallet with the note in his pocket. After a few minutes the interview ended and the respondent left Mr. Rajagopalan's place.

(20). This conclusion does not finally dispose of the appeal. It still remains to be considered whether the



respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract [Art. 311 \(2\)](#), the High Court under [Art. 226](#) has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.

(23). That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same



view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him. In exercising its jurisdiction under [Art. 226](#) on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

8. The aforesaid case is in respect of analyzing evidence whereas in the present case evidence was not adduced by the presenting officer. Therefore, one cannot draw inference that the present case is on the point of no evidence. Unless and until evidence is adduced and if analyzation of adduced evidence, if the authority come to the conclusion that it is a case of no evidence or Court come to the conclusion that it is a case of no evidence, in that event, the cited decision namely *Union of India v. H.C. Goel* (supra) is applicable.

9. The aforesaid decision in the case of *Union of*



India v. H.C. Goel (supra) has been very much taken note of in the latter decision in the case of **Managing Director, ECIL V. B. Karunakar (supra)**, therefore, latter decision is required to be taken note of even on this point learned counsel for the respondent has not made out a case so as to contend that it is not a case for remand to the disciplinary authority.

10. In the light of these facts and circumstances, the cited decision on behalf of the respondent, Union of India v. H. C. Goel (supra) would not assist the case of the respondent in so far as it is a case of no evidence. In the present case, presenting officer failed to adduce evidence, therefore, there is lacuna to the extent of in not following various Sub Rules of Rule 17 of the CCA Rules by the inquiring authority/disciplinary authority. Therefore, it is a case of remand to the disciplinary authority to proceed in the disciplinary proceedings from the defective stage and conclude the disciplinary proceedings within a period of four months from the date of receipt of this order. The respondent shall cooperate in the disciplinary proceedings in order to give quietus to the disciplinary proceedings to the above extent. Order of the learned single judge dated 02.11.2017 passed in CWJC No. 14540 of 2014 is modified to the above extent in remanding the matter to the disciplinary authority /



government to commence inquiry from the defective stage and
conclude strictly in accordance with Rule.

11. Accordingly, present Letters Patent Appeal is
allowed in part.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Mantreshwar/
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