

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11956 of 2005

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Ganesh Pandey, son of Balmiki Pandey, Resident of Village – Shikhari Chak,
P.O. Mokama Ghat, P.S. Mokama, District - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, (5th Floor), Bir Chand Patel Road, Patna.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, (5th Floor), Bir Chand Patel Road, Patna.
3. The Chief Administrator Cum Conducting Officer, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Road, Patna.
4. District Manager, Bihar State Food and Civil Supplies Corporation Limited, Madhubani.
5. Chief of Claims, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Anand, Advocate Mr. Shashi Priya Pathak, Advocate Mr. Ambrish Kumar Jha, Advocate
For the Respondent/s	:	Mr. R.S.Pradhan, Advocate Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 18-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“That the instant application is directed against the arbitrary action of the Respondent authorities in dismissing the petitioner from the service of the Respondent Corporation for the alleged irregularities and wrongful loss caused to the property of the said Corporation, in a very fiimsical and fashionable manner,



so as to impute on the petitioner a sum of unassessed and indeterminate and uncomputed liabilities without even supplying him ever any documents on the basis of which the petitioner could have proved his innocence and saved himself from being guiloted, in blatant violation of that universally cherished principles of natural justice.”

3. Petitioner while working as Assistant Godown Manager in Benipatti Godown, Madhubani alleged to have misappropriated certain amount. To that effect recovery was ordered and it was a subject matter of litigation before this Court in which petitioner had suffered an order. Thereafter, the petitioner has not pursued the matter in appeal like filing of a L.P.A.. In other words, recovery of alleged loss has attained finality. When things stood thus disciplinary proceedings were initiated while framing charge on 14.12.2001. The petitioner could not submitted his reply on the alleged fact that disciplinary authority failed to supply certain documents. In this regard the petitioner is stated to have submitted representation to furnish documents on 10.01.2002, 11.02.2002 and 22.03.2002. The Inquiring Officer proceeded to hold inquiry and completed on 02.07.2003 and forwarded the Inquiring Officer's report to the disciplinary authority. On receipt of Inquiring Officer's report, disciplinary authority issued a show cause notice on 07.07.2003. The petitioner submitted reply on 06.08.2003. The disciplinary authority with reference to the



disciplinary proceedings records proceeded to impose penalty of dismissal from service on 22.08.2003. The petitioner dissatisfied with the order of dismissal dated 22.08.2003 preferred a review petition and it was rejected on 26.05.2005. Thus the present petition.

4. Learned counsel for the petitioner vehemently submitted that petitioner has not been provided opportunity to the extent in not supplying the documents as demanded by the petitioner *vide* communication dated 10.01.2002, 11.02.2002 and 22.03.2002. Therefore, there is violation of principle of natural justice. Further it is submitted that Inquiring Officer has recommended for imposition of penalty of dismissal from service and it is not permissible. It is further submitted that role of Inquiring Officer is only to give findings on the alleged charge and Rule does not provide for recommendation of any penalty. In support of the aforesaid contention, learned counsel for the petitioner relied on Apex Court decision reported in ***State of Uttaranchal and Others vs. Kharak Sing*** reported in **(2008) 8 SCC 236**. No other contention has been urged on behalf of the petitioner.

5. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that the respondents have provided documents cited in the charge memo and it has come on



record in the review order that the petitioner has been provided documents on 13.02.2002 and 25.10.2002 respectively. The petitioner has not pleaded in this petition in respect of falsification of the version of the respondents that petitioner was provided documents on 13.02.2002 and 25.10.2002 so as to counter appropriately with reference to material information. Therefore, there is no infirmity in the order dated 22.08.2003 and 26.05.2005.

6. Heard learned counsels for the respective parties.

7. Undisputed facts are that petitioner while working as Assistant Godown Manager in Benipatti Godown, Madhubani on allegation of misappropriation of funds, there was an order of recovery of alleged loss and it was subject matter of litigation before this Court in writ petition and petitioner has suffered an order. The petitioner has not questioned the validity of the learned Single Judge's order in confirming the recovery in L.P.A therefore, insofar as recovery of alleged loss is concerned, it has attained finality.

8. Pursuant to the charge memo dated 14.12.2001, the disciplinary authority imposed the penalty of dismissal from service on 22.08.2003 and further it was confirmed by the reviewing authority on 26.05.2005. The petitioner's contention is that documents were not supplied with reference to the



representation/application dated 10.01.2002, 11.02.2002 and 22.03.2002. However, it was countered by the respondents stating that the documents cited in the charge memo were supplied to the petitioner on 13.02.2002 and 25.10.2002 as is evident from the reviewing authority's order dated 26.05.2005. Once the reviewing authority has stated in his order that whatever documents sought by the petitioner were supplied on 13.02.2002 and 25.10.2002, the ground of non supplying of documents by the official respondents to the petitioner is not available to the petitioner for the reasons that the petitioner nowhere averred that the reviewing authority's order dated 26.05.2005 to the extent that documents were supplied on 13.02.2002 and 25.10.2002 is incorrect. Therefore, the aforesaid contention of the petitioner that documents demanded by the petitioner were not supplied cannot be appreciated in the light of averments made in reviewing authority's order dated 26.05.2005.

9. Learned counsel for the petitioner submitted that inquiring authority has exceeded its jurisdiction while submitting a report to the extent that he had recommended for imposition of penalty. In support of the aforesaid contention, petitioner's counsel relied on Apex Court decision in the case of *State of Uttaranchal and Others vs. Kharak Sing* reported in (2008) 8



SCC 236. Nodoubt role of the inquiring officer is to the extent of holding inquiry and giving finding on each of the charge. Rule do not provide for any recommendation of particular penalty by the inquiring authority. Such a recommendation is severable from the inquiring officer's report to the extent of recommendation.

10. Perusal of the reviewing authority and disciplinary authority's order, it is crystal clear that they have not straightway accepted the Inquiring Officer's recommendation in respect of imposition of penalty of dismissal from service. On the other hand, both reviewing and disciplinary authority have examined the material on record as is evident from Annexure - 13 and Annexure - 16 dated 22.08.2003 and 26.05.2005. In the light of these facts and circumstances, petitioner has not made out a case.

11. Accordingly, petition stands dismissed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	26.07.2022
Transmission Date	

