

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.378 of 2019

In
Civil Writ Jurisdiction Case No.1477 of 2013

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1. The State of Bihar Represented through the Chief Secretary, Govt. of Bihar, Patna
 2. The Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna
 3. Additional Secretary, Deptt. of Health, Govt. of Bihar, Patna
 4. Joint Secretary, Deptt. of Health, Govt. of Bihar, Patna
 5. Deputy Secretary, Deptt. of Health, Govt. of Bihar, Patna
- Appellant/s

Versus

Dr. Banwari Lal, S/o Late Shivdhari Baitha, Resident of Village- Bindusar,
P.S.- Muffasil, District- Siwan

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shankar Kumar, AC to AAG- 7
For the Respondent/s : Mrs. Punam Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 10-02-2023

Heard Mr. Shankar Kumar, learned AC to AAG-7,
learned counsel for the appellants-respondents and Mrs. Punam
Kumari, learned counsel for the respondent-writ petitioner.

2. The instant Letters Patent Appeal under Clause 10 of
the Patna High Court Rules preferred by the State respondents
against the oral judgment dated 26.02.2018 passed in C.W.J.C. No.
1477 of 2013 by learned Single Judge of this Court is a glaring
example of misuse of Government resources and precious time of
this Court.



3. Before coming to the brief history of the case, it would be proper to state here that the learned Single Judge while setting aside the order of dismissal of the writ petitioner-respondent has been pleased to grant liberty to the disciplinary authority to take appropriate action against the writ petitioner-respondent of his being convicted by the criminal court under Article 311(2)(a) of the Constitution of India and Rule 20 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'Rules, 2005') as well as circular no. 7820 dated 28.10.2003 issued by the State Government to pass order on conviction of employee in criminal proceeding. However, instead of acting in terms of the aforesaid provision, the chagrined State respondents, now appellants herein took a decision to assail the order of the learned Single Judge whereby the order of termination of the writ petitioner has been set aside with the liberty aforesaid.

4. By assailing the order under appeal, it has been vehemently submitted that while the writ petitioner-respondent was posted as District Tuberculosis Officer, Bettiah, he demanded a bribe of Rs. 2000/- for release of monthly salary of one Bhushan Prasad, whereupon a Trap team was constituted on a complaint being made to the Vigilance Investigation Bureau. After



verification of allegation, raid was conducted and writ petitioner-respondent was trapped while he was allegedly demanding and acceptance of illegal gratification amount and was arrested. A decision was taken to initiate departmental proceeding vide Resolution No. 896 (9) dated 07.08.2006 on the basis of the charges as alleged in the F.I.R., reflecting grave misconduct.

5. It would be relevant to mention here that in the Memo of charge dated 07.08.2006 nothing has been enclosed on the basis of which proposed charges to be proved against the writ petitioner-respondent. Neither any list of witness of oral evidence or documentary evidence in support of charges has been enclosed. The writ petitioner-respondent submitted his show-cause, which was duly considered by the Enquiry Officer along with the other materials available on record, resulted into exoneration of the petitioner with an opinion that the charges against the writ petitioner to be doubtful and opined that the matter should be kept under abeyance till the decision of the Vigilance Court.

6. The file went up to the level of the then Chief Secretary, State of Bihar, however, instead of approving the recommendation of the departmental authority for revocation of suspension of the writ petitioner-respondent directed for initiation of a fresh departmental proceeding against the writ petitioner *de*



de novo vide notification no. 461 (9) dated 20.04.2010. Pursuant to the aforesaid order for fresh departmental proceeding/*de novo* enquiry, another enquiry officer was appointed and this time again the similar report of exoneration has been submitted after having found the charges against the writ petitioner to be doubtful, differing with the enquiry report submitted by the enquiry officer show-cause was served, which was duly replied by the writ petitioner. However, the same was not found satisfactory and he was imposed penalty of dismissal from service and decision of the Government also received concurrence by the Bihar Public Service Commission. In the meantime, the writ petitioner had filed C.W.J.C. No. 14837 of 2010, which was disposed of vide order dated 12.10.2010 directing the respondent authorities to conclude the departmental proceeding within a period of three months.

7. Learned counsel for the appellant State while assailing the order under Appeal has, inter alia, submitted that the learned Single Judge has partly allowed the writ petition by quashing the order of the punishment of the disciplinary authority in a mechanical and casual manner by not appreciating the fact that the petitioner being a Government servant had accepted bribe from the complainant, hence action of the dismissal of the writ petitioner-respondent taken by the disciplinary authority is



perfectly justified, apart from the fact that there is neither any procedural illegality in the departmental proceeding nor any violation of the principles of natural justice.

8. This Court carefully considered the materials available on record and heard the parties at length. From the record it is evident that so far the *de novo* enquiry is concerned, a Constitution Bench of the Hon'ble Supreme Court in the case of **K. R. Deb Vs. Collector of Central Excise, Shillong**, reported in **AIR 1971 SC 1447** while considering the statutory provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 held as under:

“It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the disciplinary, Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion.”



9. The aforesaid judgment was reconsidered by the Apex Court in the case of **Union of India & Ors vs P. Thayagarajan**, reported in **AIR 1999 SC 449** and explained the same observing as under:

“A careful reading of this passage will make it clear that this court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of present nature.”



10. Further, the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, especially Rule 18 talks about the action on the submission of enquiry report and Sub-Rule (1) and (2) thereof clearly stipulates, which read as under:

“18. (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

11. From the aforesaid mandate of law discussed hereinabove, it would be evident to observe that the disciplinary authority is empowered, for reasons to be recorded it by writing or direct for further enquiry, if there is some serious defect having crept into the enquiry or some important witness(s) was/were not available at the time of enquiry or was/were not examined.

12. In the case in hand, there is no list of witness nor any documentary evidence, save and except the complaint/F.I.R.



registered against the writ petitioner-respondent, in support of the charges, which is undoubtedly contrary to the provisions as contemplated in Rule 17 (3) and (4) of the Rules, 2005, and the same read as under.

“17. (3) Where it is proposed to hold an inquiry against a government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the government servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.”

13. The issue discussed hereinabove has been considered time and again by the highest Court of land in catena of judgments, one of which is the case of **Roop Singh Negi Vs.**



Punjab National Bank and Others, reported in **(2009) 2 SCC 570** holding that mere tendering or production of a document is not enough, the content of documentary evidence has to be proved by examining witnesses. The F.I.R. in itself is not an evidence without actual proof of facts stated therein. In para. 14 of the said judgment, the Apex Court held that “the purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.”

14. It would also be relevant to observe here that non-examination of complainant during departmental proceeding leads to denial of an opportunity to a government servant of cross-examination. The reliance may be taken of the judgment rendered in the case of **Commissioner of Police, Delhi & Ors. Vs. Jai Bhagwan**, reported in **(2011) 6 SCC 376**.

15. Further on the point of disagreement with the finding of the enquiry report, the Rule 2005, specially Rule 18(2) mandate that after receipt of the enquiry report, if the disciplinary authority



disagrees with the finding of the enquiry authority on any article of charge, he is under bounden duty to record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose. However, from the record it is evident that the disciplinary authority has not given tentative reasons for differing with the finding of the enquiry officer. In this regard, it would be proper to quote para 17 and 18 of the judgment of the Hon'ble Supreme Court rendered in the case of **Punjab National Bank and others Vs. Kunj Behari Misra**, reported in, **AIR 1998 SC 2713**.

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (AIR 1963 SC 1612) (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (1994 AIR SCW 1050) (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings.



The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged



officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCW 1050) (supra).”

16. This Court while meticulously examining the record also found that on the basis of the enquiry report, the departmental head as well as the departmental Minister recommended for awarding minor punishment taking into consideration the fact that the samples of hand wash of the petitioner was sent to the Forensic Science Laboratory, Patna to prove the acceptance of bribe, but the report does not support the prosecution case, as reported by the F.S.L., but the Chief Secretary rejecting the aforesaid recommendation ordered for punishment of dismissal of the writ petitioner-respondent resulting into order of termination dated 31.07.2021, which order for punishment certainly made the provision of appeal, review or revision, a redundant.

17. In any view of the matter, the entire departmental proceeding suffers from not only vice of arbitrariness, but there are various procedural irregularities right from the issuance of memo



of charge till the impugned order of dismissal, which necessitated the quashment of the punishment order and this Court finds no reason to interfere in the order under appeal.

18. Further this Court also finds that the order of termination is also without application of mind, as there is no consideration of any show cause reply/explanation of the writ petitioner-respondent, that too in a case, the departmental authority differing with the finding of the Enquiry officer has issued show-cause notice to the delinquent and the same was replied by him. Further the learned Single Judge rightly given liberty to the State respondents to proceed against the writ petitioner on his being convicted by the criminal court under Article 311(2)(a) of the Constitution of India and Rule 20 of the Rules, 2005 as well as circular no. 7820 dated 28.10.2003 issued by the Government to pass order on conviction of employee in criminal proceeding.

18. Surprisingly, instead of acted upon, in terms of the observations/liberty granted by the learned Single Judge, the State has taken a decision to assail the said order, which in the opinion of this Court is an act of unmindfulness with adversarial approach, resulting into the misuse of Government resources and the precious time of the Court, hence this Court finds it proper to



impose a cost of Rs.10,000/- (Ten thousand) for filing a frivolous appeal.

19. The State respondents are directed to deposit the cost within a period of eight weeks from today before the Patna High Court Legal Service Committee.

20. Accordingly, the present Letters Patent Appeal, sans any merit, stands dismissed.

(P. B. Bajanthri, J)

(Harish Kumar, J)

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CAV DATE	NA
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