IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.406 of 2019

In

Civil Writ Jurisdiction Case No.15639 of 2010

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1. The State of Bihar through the Chief Secretary, Old Secretariat, Government of Bihar, Patna
2. The Principal Secretary General Administration Department, Old Secretariat Building, Government of Bihar, Patna
3. The Joint Secretary General Administration Department, Old Secretariat Building, Government of Bihar, Patna
4. The Deputy Secretary General Administration Department, Old Secretariat Building, Government of Bihar, Patna
5. The Under Secretary General Administration Department, Old Secretariat Building, Government of Bihar, Patna
6. The Departmental Enquiry Commissioner General Administration Department, Old Secretariat Building, Government of Bihar, Patna
7. The District Magistrate, Supaul

... ... Appellant/s

Versus

Sri Mundrika Choudhary, Son of Shri Muneshwar Choudhary R/o Mohalla-Krishi Nagar, P.S. Shastri Nagar, District-Patna

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Saroj Kumar Sharma (AC To AAG-3)
For the Respondent/s	:	Mr. Abhinav Srivastava, Advocate
`		Mr. Raushan, Advocate
		Mr. Pushkar Bharadwaj, Advocate
		Mr. Arpit Anand, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-10-2023

The State is aggrieved with the judgment of the learned Single Judge which interfered with the punishment of dismissal awarded to the respondent, the writ petitioner who was serving as a Director, Accounts Administration and Self Employment at DRDA, Supaul.

2. Learned Government Advocate argued that there was a search conducted in the office of the respondent from where huge cache of cash was recovered from the various almirahs. An assistant was caught red handed while taking a bribe of Rs. 35,000/-. The said action was carried out by the vigilance team on 28.01.2006 upon which on 29.01.2006, the respondent submitted a leave application from 30.01.2002 to 05.02.2006 and without it being sanctioned remained unauthorizedly absent. The respondent was proceeded against for the complicity in the matter of seizure of cash from the office, which was under his charge, unauthorized absence from headquarter on 29^{th} and 30^{th} of January, 2006 and also non-cooperation with the Vigilance Department. The Enquiry Officer exonerated the respondent of the first charge but found him guilty in the other two charges.

3. The Disciplinary Authority, however, differed from the findings of the Enquiry Officer and issued a second show cause notice dated 20.11.2008. After receiving the explanation of the delinquent employee, an order of punishment of compulsory retirement was passed on 29.07.2010. The respondent who was in-charge of the office was definitely aware of the illegal financial transactions carried out in the office and in any event the Court sitting in judicial review should not have interfered with the findings of the disciplinary enquiry, as also the punishment imposed. Even on the question of proportionality, the compulsory retirement cannot be faulted since it was required to act as a deterrent to those involving themselves in large scale corruption.

4. Learned counsel appearing for the respondent points out that there was absolutely no reason stated in the second show cause notice issued by the Disciplinary Authority or evidence discussed, to arrive at an opinion divergent from that entered into by the Enquiry Officer, to find the respondent guilty of the charge of complicity in the matter of the recovery of amounts from the office. It is pointed out that the respondent was not present in the office at the time of such recovery and he had never been summoned by the Vigilance Department, which

again negatives the charge regarding non-cooperation. As far as the unauthorized absence, the respondent had submitted a leave application due to medical reasons and immediately on the Controlling Authority declining the same, joined for the duty. It is also pointed out that he was acquitted in the criminal case. Further, the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity "CCA Rules") is pointed out to contend that the respondent was not supplied with a list of witnesses or list of documents as is required under Rule 17(4). The learned Counsel also relied on ***Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84*** and ***Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570***.

5. The learned Single Judge found that the respondent was made a scape goat, especially when he was not present in the office when the alleged recovery of huge sums of money was carried out during the course of a raid conducted by the vigilance team. The respondent has been discharged under Section 239 of the Cr.P.C in the vigilance case by the Special Judge, Vigilance(Trap), Patna. The Enquiry Officer also did not find the respondent guilty of charges 1 and 3.

6. As far as the absence from the headquarter on 30.01.2006, the respondent was ill and the appellants have not

produced any material to controvert the said contention of the respondent. The Disciplinary Authority was also found to have violated the principles of natural justice by not affording an effective opportunity of hearing, when he differed from the findings of the Enquiry Officer; since no specific reasons or grounds have been stated for coming to a different opinion. The order of punishment dated 29.07.2010 only narrates the facts and does not clearly spell out the reasons for coming to the conclusion regarding the complicity of the respondent. It was on the above reasoning that the learned Single Judge interfered with the punishment imposed and directed reinstatement.

7. ***Kunj Behari Misra*** *(supra)* while reiterating the trite principle that a Disciplinary Authority would be entitled to differ from the findings of the enquiry report, emphasized that need for affording an opportunity to the delinquent employee to explain the grounds which persuades the Disciplinary Authority to differ from the findings of the Enquiry Officer. The Hon'ble Supreme Court relied on a Constitution Bench decision in ***B. Karunakaran ECIL v. B. Karunakar, (1993) 4 SCC 727***. In ***Roop Singh Negi*** *(supra),* the Hon'ble Supreme Court held that in a departmental enquiry the function of the Enquiry Officer is quasi judicial in nature and though strict rules of evidence or

applicability of the Indian Evidence Act, 1872 cannot be insisted upon, there should be evidence led properly in the enquiry proceedings and the delinquent employee given sufficient opportunity to controvert the same. It was held that mere production of documents is not enough and the contents of such documentary evidence has to be proved by examining witnesses. It was also held that mere confession made by the appellant before the police would not be sufficient to find the delinquent employee guilty in departmental proceedings.

8. Admittedly, in the present case, the Enquiry Officer exonerated the respondent in the first and third charges. The respondent was not present in the office when the recovery of cash was carried out. There was no recovery carried out from his person also. The respondent was exonerated in the criminal case filed on the very same transaction. Insofar as the third charge is concerned, there is nothing to indicate non-cooperation of the respondent in the vigilance case. The respondent had submitted a leave application on the very next day, a Sunday, which was not sanctioned by the Controlling Authority. However, there is nothing to indicate that the leave application was submitted to avoid summons from the Vigilance Department. As far as the second charge is concerned, the

appellant has unauthorizedly absented himself without sanction of the leave applied for, on 30.01.2006.

9. There is nothing brought on record to indicate that the respondent was supplied with a list of witnesses or with a list of documents and the enquiry report also does not indicate the witnesses who were examined in the enquiry. However, these facts may not be very relevant since the respondent was exonerated in two charges, the first one regarding complicity in the matter leading to the recovery of cash and the third charge, with relation to the non-cooperation with the vigilance team.

10. Now, we come to the significant argument put forth by the respondent insofar as the second show cause notice having contained no reasons. The second show cause notice was directed to be translated and it has been placed on record by the State, the second paragraph of which is extracted hereunder:

> *During the proceeding while hearing on the charge memo framed against you, the conducting officer found that charge no. 1 was not proved against you in the inquiry report forwarded on the basis of records presented by the District Representative, while all the other charges were proved. On reviewing the inquiry report submitted by the conducting officer, disagreement has been shown on the ground that, huge amount of money was recovered from your office in the raid conducted by vigilance department. And by the documents found in*

your office, your indulgence has come in light. Thereby it seems that you have failed to prevent corruption at your office.

11. As has been held in ***Kunj Behari Misra*** *(supra),* the Disciplinary Authority, if differing from the findings of the Enquiry Officer, is mandatorily obliged to give an opportunity of hearing to the delinquent employee regarding the grounds on which the Disciplinary Authority differs from the findings of the Enquiry Officer. If the grounds are not explicit from the notice issued; then the opportunity afforded is not sufficient. The opportunity is not namesake and the delinquent should have the chance to controvert the grounds stated by the Disciplinary Authority.

12. A reasonable opportunity for hearing, in compliance of the principles of natural justice, requires explicit statement of the grounds on which such difference of opinion has been entered into. The extracted portion is bereft of any reasoning. It states that on seeing that the Enquiry Officer disagreed with the ground of recovery of the huge amount of money from the office of the delinquent employee, in the raid conducted by the Vigilance Department. This is only a statement of the finding of the Enquiry Officer. The Disciplinary Authority then goes on to say that by the documents found in the

delinquent employee's office his indulgence has come to light. It has also been stated that the delinquent has failed to prevent corruption at his office; which is not an allegation levelled against him at all. The Disciplinary Authority has failed to discuss any of the evidence led at the enquiry and produced before the Enquiry Officer. There is absolutely no ground on which the Disciplinary Authority can be found to have differed from the findings of the Enquiry Officer.

13. As far as the second charge of unauthorized absence is concerned, it is admitted, but it is only for one day. The charge assumes significance in the context of a vigilance raid having been conducted in the office, under the delinquent employee's charge, on the just previous day. Rather than apply for a medical leave, he should have been present in the office on the next day and the attempt to proffer a leave application can only be considered to be an attempt to avoid the vigilance team. In any event, the unauthorized absence having been proved at the enquiry, there could be a punishment imposed on that count. The punishment of compulsory retirement cannot at all be sustained for reason of the three charges, of which the greater and grosser charge of complicity in the matter of the huge amount of cash kept in the office, cannot at all be pinned on the

respondent.

14. In the above circumstances, looking at the penalties as seen from Rule 14 of the CCA Rules, we are of the opinion that the respondent can be imposed with a penalty of withholding of two increments of pay with cumulative effect. The respondent has retired while the proceedings were pending before this Court and there could not have been any reinstatement.

15. In such circumstance, the order of the learned Single Judge is modified to the extent of directing the deemed reinstatement of the writ petitioner as on the date of his suspension, thus entitling him to the full pay and allowances as is due to him till the date of his retirement; with the withholding of two increments with cumulative effect, taking effect from the date of the order of punishment imposed. The respondent shall be entitled only to the subsistence allowance during the period of his suspension when the enquiry was in motion. The respondent's pay and allowances shall be fixed in accordance with the directions herein above and minus the pension, if any, paid during the said period. The balance amount shall be paid within a period of four months from the date of receipt of a certified copy of this judgment. The respondent shall also be

entitled to pension which shall be determined on the fixation of his last pay drawn as directed herein above and the arrears, if any, shall also be paid within the time provided.

16. The L.P.A. is partly allowed modifying the punishment with the above directions.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Anushka/-

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