IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17962 of 2015

Suresh Kumar Mallick Son of late Chandradeo Prasad Mallick resident of Mohalla- Sonbarsa, Musapur, road, Gali No. 1, P.o. -Samastipur Head Post Office, P.s Samastipur Sadar, District Samastipur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Food and Consumer Protection, Govt. of Bihar, Old Secretariat, Patna
3. The Additional Secretary, Department of Food and Consumer Protection, Govt. of Bihar, Old Secretariat, Patna
4. The Food Commissioner,Government of Bihar, Old Secretariat ,Patna.
5. The Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th, Floor, Veer Chand Patel Path, Patna, Bihar, through the Managing Director.
6. The Managing Director, the Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th, Floor, Veer Chand Patel Path, Patna, Bihar.
7. The Chief of Admistration of the Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th Floor, Veer Chand Patel Path, Patna, Bihar.
8. The Deputy Cheif of Administration , Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th Floor, Veer Chand Patel Path, Patna, Bihar.
9. The Chief of Claim, Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th, Floor, Veer Chand Patel Path, Patna, Bihar.
10. The Deputy Chief of Claim, Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th, Floor, Veer Chand Patel Path, Patna, Bihar.
11. The Chief of Finance, Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th, Floor, Veer Chand Patel Path, Patna, Bihar.
12. The Secretary, Board of Trustee, Bihar State Food and Civil Supplies corporation Ltd, Sone Bhawan, 5th Floor, Veer Chand Patel Path, Patna, Bihar.
13. The District Manager, The State of Food Corporation, Gopalganj, District Gopalganj.
14. The District Manager, the State Food Corporation , Khagaria, District Khagaria.
15. The Audit Officer, office of the District Manager, State Food Corporation , Camp Office, Khagaria,
16. The Officer on Special Duty-cum-Conduction Officer, Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, 5th Floor, Veer Chand Patel Path, Patna, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nityanand Mishra, Advocate
For the Corporation	:	Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 05-12-2023

Heard Mr. Nityanand, learned counsel for the petitioner and Mr. Shailendra Kumar Singh, learned counsel appearing on behalf of Bihar State Food Corporation.

2. The present writ petition has been filed for the following reliefs:-

> *"(i) For issuance of writ in the nature of certiorari for quashing of the order issued vide memo no. 10244 dated 21.8.2015 (Annexure-18) by the Managing Director, SFC, Patna (respondent no.6) whereby and where under the departmental proceeding has been concluded under Rules 26 III A and B of Service Conduct and Disciplinary Rules of the Bihar State Food and Civil Supplies Corporation Ltd., Patna and as punishment withheld the entire retirement benefits of the petitioner.*
> *(ii) For issuance of writ in the nature of mandamus commanding and directing the respondents to pay the entire retiral benefits along with dues increments including difference amount of salary and other allowances in the light of authorization letter no. 5196 dated 19.6.2012 (Annexure-10) which has also been mentioned as letter no. 1204 dated 29.6.2012 issued by the District Manager, SFC, Gopalganj, (Respondent no.13) as contained in Annexure - 12 to this writ application.*
> *(iii) For further directing and commanding the respondents concerned to pay interest at the rate of 18% per annum on the amount of entire retiral benefits along with dues increment including dues difference of salary and other allowances which have not been paid to the petitioner till date due to latches on the part of respondent concerned.*
> *(iv) For payment of compensation and litigation cost also to the petitioner for physical, mental and financial injury which was made due to non-payment of the above*

mentioned dues.
(v) For any other relief/ reliefs for which the petitioner is entitled to in accordance with law."

3. Learned counsel for the petitioner submits that the petitioner was working as Assistant Account Officer under District Manager, BSFC Gopalganj and he was transferred to Khagaria BSFC and according the petitioner joined the post of Assistant Account Officer under District Manager BSFC Khagaria on 21.11.2006. The petitioner was again transferred from BSFC Khagaria to BSFC Gopalganj and he was relieved from the Khagaria on 31.08.2009. After joining the post at BSFC Gopalganj, the petitioner was superannuated from service w.e.f 31.12.2010.

4. Learned counsel for the petitioner submits that after his superannuation one Srimati Poonam Devi, Hon'ble Member, Bihar Legislative Assembly, has written letter dated 24.07.2011 to inquired into the matter of defalcation of food grains on Samiti No. 2 Khagaria. As per order of the Managing Director, BSFC, Bihar Patna, the inquiry officer inquired into the matter and thereafter the inquiry report was submitted on 16.09.2011 to the Managing Director, BSFC, Bihar, Patna.

5. Learned counsel for the petitioner submits that from perusal of the inquiry report it is crystal clear that the

inquiry was conducted for inquiring the irregularities committed by the authorities concerned for the financial year 2011-12 in which it has come in light that in financial year 2011-12 one Mukutmani Savarkar has committed irregularities of 10953.75 quintal rice and 53320.05 quintal wheat total amounting to Rs. 3.21 crores at the instance of District Manager, Khagaria. He further submits that the petitioner was not concerned with the said irregularities committed by the authorities i.e. one Mukutmani Sarvarkar, District Manager, Khagaria with the co-operation of the other employees as petitioner was transferred and relieved to BSFC Gopalganj on 31.08.2009 from where he has been retired on 31.12.2010. It is evident from the audit report from September, 2010 to March, 2011 that no irregularities has been committed and the said audit report for the said period suggests that the irregularities has been committed by the employees, authority of the said godown after April 2011 onwards. The Deputy Chief of the Claim issued a letter vide memo no. 917 dated 02.02.2011 to one Mukutmani Savarkar directing him to deposit Rs. 3.77 crores as the said amount was defalcated by him with the conspiracy of District Manager, Khagaria and other employees who were working at that relevant time.

6. Learned counsel for the petitioner submits that the Assistant-cum-Incharge Account Officer was directed vide letter no. 1244 dated 13.02.2012 issued by respondent no. 6 to deposit 7.5% of Rs. 3.77 crores i.e. Rs. 28,27,500/- in the account of corporation and vide same letter Shri Anil Kumar Srivastava, the Chief Executive, Khagaria was directed to deposit 2.5% of Rs. 28,27,500/- i.e. Rs. 9,42,500/- in the account of the corporation otherwise disciplinary and legal action will be taken against both the persons. In response to the aforesaid letter, Shri Anil Kumar Mishra has filed an application before the respondent no. 6 on 04.03.2012 explaining all the relevant facts including the fact that till 31.08.2009 the petitioner was working as Assistant Accounts Officer, Khagaria and after his relieving from Khagaria the charge was handed over to one Shiv Kumar Singh, the then Incharge Assistant Accounts Officer.

7. Learned counsel for the petitioner submits that after receiving the application from Shri Anil Kumar Mishra, who has mentioned the name of the petitioner and Shiv Kumar Singh and on the basis of the application of Shri Anil Kumar Mishra, the respondent no. 6 has directed the respondent no. 10 to recover the amount from the employees in equal proportion

but before directing the respondent No. 10 he did not take into consideration that the petitioner whose name was mentioned in the application of Shri Anil Kumar Mishra was not posted at Khagaria while such defalcation has been taken place which suggests that the action of the respondent no. 6 is unreasonable and without application of mind. The respondent no. 10 issued letter to the petitioner stating therein that the irregularities of defalcation of Rs. 3.77 crore committed by Mukut Mani, the contractual Assistant Manager, Khagaria, the respondent no. 6 has directed that 7.5% of Rs. 3.77 crores i.e. Rs. 28,27,500/- will be deposited in equal proportion from the employees including the petitioner i.e. Rs. 9,42,500/- and as such, the same is recoverable from the petitioner and directing the petitioner to deposit the same in the corporation's account otherwise legal steps will be taken against him.

8. Learned counsel for the petitioner submits that after receiving the aforesaid letter the petitioner has filed an application before respondent no. 6 on 15.10.2012 explaining all the facts that while such defalcation has been taken, he was not posted at Khagaria and as such, he has no concern and he is not involved in the said defalcation and he has requested the respondent no. 6 to direct the respondent no. 10 to recall the

aforesaid letter with respect to the petitioner, but no action has been taken by the respondent no. 6. He further submits that from perusal of the inquiry report (Annexure-1), it is evident that the name of the petitioner has not come in light and it is also clear from the inquiry report that the defalcation was made in the year 2011 and the inquiry was made in the financial year 2011-12 and not in the year 2006-2009, between which the petitioner was working as Assistant Accounts Officer and as such, the petitioner is not liable to get involved in the said defalcation. He further submits that the petitioner has challenged the order passed by the respondent no. 6 dated 31.10.2009 before the Hon’ble Patna High Court in CWJC No. 7214 of 2010 which was disposed of on 30.04.2010 directing the petitioner to file an appeal before the authority concerned and respondents were directed to dispose of the appeal of the petitioner within three months from the dated of receipt/production of copy of the order. He further submits that as per the direction of this Hon’ble Court, the petitioner has filed an appeal before the appellate authority, but the appellate authority did not pass any order within the stipulated time as mentioned in the order dated 30.04.2010 passed in CWJC No. 7214 of 2010, then the petitioner has filed contempt petition bearing MJC No. 3871 of

2011 and during the pendency of the contempt petition, the authorities have passed order on 28.11.2011. He further submits that the MJC No. 3871 of 2011 was disposed of with a liberty to the petitioner to challenge the order impugned dated 28.11.2011 before an appropriate forum and the petitioner has challenged the same before this Hon'ble Court in CWJC No. 1447 of 2012 and the same was disposed of vide order dated 11.04.2014 by which the order dated 30.10.2009 passed by the Managing Director of the Corporation, the order dated 28.11.2011 passed by the appellate authority i.e. Principal Secretary, Food and Consumer Protection, Bihar, Patna as well as order dated 27.12.2011 issued under the signature of the Managing Director is hereby quashed.

9. Learned counsel for the petitioner submits that in response to the letter contained in Annexure-8, the respondent no. 13 issued letter to the Desk Officer, Budget Authority Cell, Head quarter, Patna vide letter no. 1020 dated 22.05.2012 requesting therein to pay the excess amount of Rs. 16,462.93/- to the petitioner. Although the respondent no. 11 had issued a authority letter vide letter no. 5196 dated 19.06.2012 to the Sr. Branch Manager, Canara Bank, Gopalganj for payment of excess recovered amount of Rs. 16,462.93/- and annual

increment of Rs. 1,33,916/- to the petitioner and forwarded the same to the respondent no. 13 for further action for the same. The petitioner again sent the applications through registered post on 27.11.2012 before the respondent no. 6 and the respondent no. 13 for payment of dues amount of Rs. 16,462.93/- and Rs. 1,33,916/- as per authority letter issued by the Chief of Claim stating therein that so far the charge levelled against the petitioner after due verification and also requested them to pay the retiral benefits but no response was given by the respondent authority then the petitioner has approached this Hon'ble Court by filing CWJC No. 2374 of 2014 and the same was disposed of vide order dated 11.04.2014 and the Hon'ble Court has been pleased to quashed the letter dated 22.05.2012 with a liberty to the respondent corporation to take action in this regard but only in accordance with law by giving the petitioner the due opportunity of hearing and representation. Action, if proposed, must be initiated within one month from the date of receipt/production of the order and must be concluded within six months thereafter. Depending upon the final order to be passed by the competent authority in this regard, the petitioner shall be paid his arrears of salary and retiral dues accordingly, immediately thereafter.

10. Learned counsel for the petitioner submits that after the passing of the order dated 11.04.2014 in CWJC No. 2374 of 2014 the petitioner submitted his representation along with the order dated 11.04.2014 before the respondent concerned for concluding the departmental proceeding. The respondent no . 16 issued a letter vide memo no. 9781 dated 08.09.2014 to the respondent no. 14 by which the demanded Prapatra 'Ka' issued against the petitioner. In compliance of the aforesaid letter the petitioner submitted his explanation before the respondent no. 16 on 15.09.2014 explaining all the facts and averments along with supporting documents for the purpose of proper consideration of the case of the petitioner.

11. All of sudden the petitioner has received the impugned order issued vide memo no. 10244 dated 21.08.2015 by the respondent no. 6 whereby and whereunder the departmental proceeding pending against the petitioner concluded and punishment awarded to the petitioner by withholding his entire retirement benefits.

12. Learned counsel for the petitioner submits that from perusal of the enquiry report contained in Annexure-17 (series) submitted by the enquiry officer, the petitioner was not found guilty in the said defalcation even then the petitioner was

not implicated in that defalcation and issued the impugned order for recovery of the said defalcated amount and it appears from the enquiry report that for the said defalcation Mukutmani Sarewar is fully responsible and the petitioner was nowhere found guilty of that defalcation and even the respondent no. 6 had not considered the enquiry report and other documents along with the statements which was made by Sri Anil Kumar Mishra and his application dated 01.12.2014 who is one of the important witness in the departmental proceeding and the same was received by the petitioner under RIT Act.

13. Learned counsel for the petitioner has relied upon the paragraph nos. 17, 19 and 21 of the judgment reported in (1998) 7 SCC 84 **(Punjab National Bank and others versus Kunj Behari Misra)** which is quoted hereinbelow;

> *"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case 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 enquiry officer had given an adverse finding, as per Karunakar case 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 enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the*

enquiry 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 enquiring 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 enquiry 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.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed. require the authority which has to take a final decision and can impose a penalty, to give framed against the officer.

21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the *disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs"*

14. He further relied upon the judgments reported in 2014 (4) PLJR 386 **(Ranjeet Singh versus State Bank of India)** and AIR 2001 SCC 2398 **(S.B.I and others versus Arvind K. Shukla)** on the ground of non-furnishing of reason to the delinquent officer.

15. Learned counsel appearing on behalf of the Corporation submits that the petitioner was superannuated from the post of Assistant Account Officer on 31.12.2010 in the office of SFC, Gopalganj. A show cause notice was issued to the petitioner vide memo no. 917 dated 02.02.2012 and letter no. 4229 dated 22.05.2012 regarding defalcation of public food grains amounting to Rs. 3.77 crores and the competent authority has prepared a memo of charge against the petitioner and issued show cause notice vide memo no. 4599 13.05.2014 and the petitioner had replied the same. The enquiry officer has submitted the enquiry report on 02.12.2014 and found that all the charges have been proved against the petitioner and after considering the memo of charges, reply by the petitioner and the

enquiry report the competent authority has passed punishment order and there is no illegality in the order and after due compliance of the principle of natural justice the impugned order has been passed.

16. Having regard to the submission of the parties it appears that in the enquiry report submitted by the enquiry officer the petitioner was not found guilty of the said defalcation even then the petitioner was not implicated in that defalcation and the enquiry officer has not found the petitioner guilty but the disciplinary authority differed with the enquiry report without assigning any reason has passed the order dated 21.08.2015 and punishment awarded to the petitioner by withholding his entire retirement benefits and due to action of the respondents the petitioner has not been paid the entire retiral benefits along with dues and increments including differences of salary and other amounts.

17. It is well settled principle of law reported in (1998 (7) SCC 84)(supra) that when disciplinary authority differed with enquiry report then he must assigned the reasons for differing his opinion with enquiry report but in the present case the disciplinary authority has not assigned any reason. The disciplinary authority was required to considered the

representation against tentative notes of disagreement so recorded by the disciplinary authority and should have came to a finding in this regard. The disciplinary authority was required to again inform the petitioner with regard to the finding of the petitioner’s guilt recorded reasons as to why the petitioner’s representation was not accepted. But the same is missing in the present case.

18. The petitioner is said to have been superannuated w.e.f. 31.12.2010.

19. In view of the aforesaid facts and circumstances, the order dated 21.08.2015 (Annexure-18) is set aside. The respondent authority (Respondent No. 2) is directed to pay all the consequential benefits (including retirement benefits) to the petitioner within a period of 3 months from the date of production/receipt of the copy of this order. There will be no order as to costs.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.06.2024
Transmission Date	N/A