

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7586 of 2013

Ashok Kumar Tiwari Son of Late Shri Ram Pratap Tiwari, Resident of Bank Of India Colony, A-18, Near Ram Nagari More, P.S. Shastri Nagar, District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal Secretary, Rural Development Department, Government Of Bihar, Patna
4. The Commissioner, Purnea Division, Purnea

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Adv. Mr. Prince Kumar Mishra, Adv. Mr. Rahul Kumar Singh, Adv.
For the State	:	Mr. Raghwanand, GA-11 Mr. Prabhat Kumar, AC to GA-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 05-09-2023

The present writ petition has been filed for quashing the Resolution dated 24.02.2012, issued by the Officer on Special Duty cum Deputy Secretary to the Government, General Administration Department, Government of Bihar, Patna, whereby and whereunder punishment of dismissal from service has been inflicted upon the petitioner under Rule 14 (xi) of the Bihar Government Servants (Classification, Control and Appeal) (Amendment) Rules, 2007. The petitioner has also



prayed for grant of consequential relief by way of reinstatement and payment of back wages, apart from grant of other benefits.

2. The brief facts of the case are that the petitioner was initially appointed in the services of the State Government as a Bihar Administrative Service Officer on 03.10.2000 and was posted at various places from time to time. Subsequently, the petitioner was posted as Block Development Officer, Palasi Block, Araria, from 09.05.2005 to 14.10.2005. On 14.10.2005, the petitioner had handed over the charge to one Sri Surendra Roy. Thereafter, by a Resolution dt. 29.01.2009, the petitioner was placed under suspension and then vide memo dated 19.03.2009, memo of charges in Praptra 'Ka' was served upon the petitioner and a departmental inquiry bearing Departmental Inquiry No. 3 of 2009 was initiated. In the said memo of charges, primarily, two charges were levelled, one regarding opening of Bank account in Dehti PACS, contrary to the guidelines, issued by the State Government, pertaining to Sunushtit Gramin Rojgar Yojna (SGRY) and depositing a sum of Rs. 172.20 lacs approximately, in between the period 16.5.2005 to 30.08.2005 and the other one regarding misuse of the said money. The petitioner had filed his reply, whereafter the departmental inquiry had been conducted and then the Inquiry



Officer had submitted an inquiry report dated 12.11.2009, wherein the first charge regarding opening of bank account in Dehti PACS had stood proved, however, the charge regarding misuse of money was not found to have been proved. The Principal Secretary, Personnel and Administrative Reforms Department, had then, vide letter dated 11.01.2010, proposed for inflicting minor punishment upon the petitioner, however, the Respondents, had instead decided to issue an amended memo of charge, which was issued vide memo dated 12.07.2010 and thereafter, a de novo inquiry was initiated, wherein the then Commissioner, Purnea Division, Purnea was appointed as the new Inquiry Officer.

3. As far as the amended memo of charge is concerned, the same contains two charges, firstly regarding the petitioner having deposited a sum of Rs. 1.72 crore approximately with the Dehti PACS in account no. 14 of 2004 and secondly, the petitioner having misused the said money for personal gains. The Inquiry Officer had then held the inquiry and submitted his inquiry report, vide letter dated 30.3.2011, finding the aforesaid two charges to have been proved. The Disciplinary Authority had then issued a second show cause notice dated 27.4.2011, to which the petitioner had submitted his reply and then the



impugned order dated 24.02.2012 has been passed, whereby and whereunder punishment of dismissal from service has been inflicted upon the petitioner. The said order dated 24.02.2012 had been challenged before this Court by way of the present writ petition and the same was allowed by an order dated 15.07.2016, on the ground that the present case stands on a similar footing to that of Shamim Akhtar, Surendra Rai and Gyanand Yadav, whose orders of punishment of dismissal from service have already been set aside by various orders passed by coordinate Benches of this Court in the writ petitions preferred by them. Nonetheless, the Respondent-State had filed an appeal bearing LPA No. 2377 of 2016, which was allowed by a learned Division Bench of this Court, by an order dated 19.01.2023 and the aforesaid order dated 15.07.2016, passed by the learned Single Judge has been set aside, on the ground that the same is not a reasoned order, whereupon the matter has been remanded back to this Court.

4. The learned Senior Counsel for the petitioner has submitted that after the first departmental inquiry was concluded and the Inquiry Officer had submitted his inquiry report dated 12.11.2009, the Disciplinary Authority realized that major punishment cannot be inflicted upon the petitioner, hence



thought it proper to initiate a de novo inquiry by amending the memo of charge and levelling charges of graver nature. Resultantly, an amended memo of charge was issued vide memo dated 12.07.2010 and thereafter, a de novo inquiry was initiated. The learned Senior Counsel for the petitioner has submitted, by referring to Rule 18 (2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “the Rules, 2005”), that without concluding the first departmental proceeding and taking the same to its logical conclusion, de novo inquiry could not have been resorted to. In this regard, the learned Senior Counsel for the petitioner has referred to the following Judgments:-

“(i). Judgment, rendered by the Hon’ble Apex Court in the case of *Kanailal Bera vs. Union of India & Ors.*, reported in (2007) 11 SCC 517;

(ii). Judgment, rendered by a coordinate Bench of this Court in the case of **Awadhesh Upadhyay** vs. State of Bihar and Ors., reported in 2012 (2) PLJR 678;

(iii). The judgment dated 19.01.2023, rendered by the Ld. Division Bench of this Court in the case of State of Bihar & Ors. vs. Md. Shamim Akhtar (L.P.A. No. 1653/2016).

5. The learned Senior Counsel for the petitioner has contended that in fact, one writ petition assailing the order of



punishment of dismissal from service, arising out of same and similar charges, as have been levelled against the petitioner herein, filed by one Md. Shamim Akhtar, the then Block Development Officer, Palasi, has been allowed by a judgment dated 15.03.2016, passed by a coordinate Bench of this Court in CWJC No. 723/2013 and the order of punishment of dismissal from service has been set aside. It is pointed out that the said order dated 15.03.2016, passed by a coordinate Bench of this Court in CWJC No. 723 of 2013 was assailed before the learned Division Bench of this Court in LPA No. 1653 of 2016, by the State-Respondents, however, the same has also stood dismissed by a judgment dt. 19.01.2023, with the following observations: -

“(2). Perusal of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it is evident that disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer's report/finding. The disciplinary authority had option of either accepting or rejecting the finding of the Inquiring Officer's report or in the event of disagreeing with the inquiring officer report or finding. In that event disciplinary authority has option of issuing of show cause notice to the concerned person to the extent of disagreeing with the inquiring officer's report or finding & he had option of remanding the matter to the inquiring authority to commence the inquiry from the defective



stage and complete the process of inquiry or he/she can complete the inquiry. On the other hand, in the present case disciplinary authority proceeded to amend the charge and ordering fresh inquiry. Such procedure is not in consonance to the law for the reason that Bihar Govt. Servant (Classification, Control and Appeal) Rules, 2005 do not provide for such procedure. In fact, the petitioner in para 25 and 56 of the writ petition has specifically contended that ordering fresh inquiry is bad in law.

(3). In the light of these legal issues, the appellants-State have not made out a case so as to interfere with the order of learned Single Judge dated 15.03.2016 passed in CWJC No. 7623 of 2013. Accordingly, the present Letters Patent Appeal stands dismissed.”

6. Thus, the learned Senior Counsel for the petitioner submits that on same and similar analogy, since the present case is akin to the case of the aforesaid Md. Shamim Akhtar, whose writ petition has already been allowed by a coordinate Bench of this Court by a judgment dated 15.3.2016, passed in CWJC No. 723 of 2013, whereby the order of punishment of dismissal from service has been set aside and the same has also been upheld by the Ld. Division bench of this court, the present writ petition also deserves to be allowed. The learned Senior Counsel for the petitioner has contended that the present case is squarely covered by the law laid down by the Hon'ble Apex Court in the



case of *Kanailal Bera* (supra).

7. Nonetheless, the learned Senior Counsel for the petitioner has further elaborated his submissions and submitted that a bare perusal of the first inquiry report would show that neither any oral evidence was led nor any documents were exhibited, hence, admittedly the said inquiry report suffers from the vice of being based on no evidence. It is also submitted that similarly, the second inquiry report also suffers from the vice of being based on no evidence, inasmuch as neither any oral evidence was led nor any documents were exhibited and in fact the inquiry report dated 23.01.2010 of the Block Development Officer, Palasi, though mentioned in the memo of charge to be one of the evidence on which the prosecution seeks to rely, had neither ever been produced before the Inquiry Officer nor was supplied to the petitioner, as is apparent from internal page no. 6 of the second inquiry report dated 30.03.2011 (running page no. 100 of the brief). It is submitted that under similar circumstances, a coordinate Bench of this Court has set aside the order of dismissal from service of one similarly situated person namely Md. Shamim Akhtar, by a judgment dated 15.03.2016, passed in CWJC No. 723 of 2013, which has also been upheld by the learned Division Bench of this Court by a Judgment dated



19.01.2023, passed in LPA No. 1653 of 2016. Thus, it is submitted that the entire departmental proceedings in question as well as the inquiry reports stand vitiated in the eyes of law, on account of being based on no evidence. Reference, in this connection, has been made to the judgments, rendered by the Hon'ble Apex Court in the case of *Roop Singh Negi vs. Punjab National Bank & Others*, reported in (2009) 2 SCC 570, in the case of *Kuldeep Singh vs. Commissioner of Police & Others*, reported in (1999) 2 SCC 10, in the case of *State of Uttar Pradesh & Others vs. Saroj Kumar Sinha*, reported in (2010) 2 SCC 772 and in the case of *Union of India & Others vs. S. K. Kapoor*, reported in (2011) 4 SCC 589.

8. Lastly, it has been submitted by the learned Senior Counsel for the petitioner that the impugned order dated 24.02.2012 is an unreasoned order, wherein no clear, cogent and succinct reasons have been furnished for the purposes of coming to a decision to inflict punishment of dismissal upon the petitioner, which, in any view of the matter, is an indispensable part of the decision making process, hence, on this ground as well, the impugned order dated 24.02.2012 is fit to be set aside. Reference, in this connection, has been made to a judgment, rendered by the Hon'ble Apex Court in the case of *Oryx*



Fisheries Pvt. Ltd. vs. Union of India & Ors., reported in (2011)
13 SCC 427.

9. Per contra, the learned counsel appearing for the Respondent-State has submitted that despite clear instructions / guidelines mentioned in the SGRY, the petitioner, instead of opening bank account in a Nationalized Bank, had opened account in Dehti PACS and deposited a sum of Rs. 172.20 lacs in between the period 16.05.2005 to 30.08.2005 as also had misused the same. It is further submitted that a bare perusal of the conduct of the entire departmental proceedings would show that there is no procedural error so as to warrant any interference with the order of punishment dated 24.02.2012 and moreover, this Court would not sit in appeal and re-appreciate the evidence, hence, the present writ petition is fit to be dismissed.

10. I have heard the learned counsel for the parties and perused the materials on record. This Court finds from the records that a departmental proceeding was initiated, vide memo dated 19.03.2009, charges were framed in Praptra 'Ka' and the Inquiry Officer had held a regular departmental inquiry, whereafter inquiry report was submitted, vide memo dated 12.11.2009, wherein the charge regarding opening of account in Dehti PACS was proved, however, the charge regarding misuse



of money was not proved. A bare perusal of the first inquiry report dated 12.11.2009 would show that admittedly, the account number is 14, which was opened in the year 2004 i.e. prior to the posting of the petitioner as Block Development Officer, Palasi and in fact, the second inquiry report dated 30.3.2011 also substantiates the fact that the account in question was opened prior to the posting of the petitioner as Block Development Officer, Palasi. Nonetheless, this Court finds that after the Inquiry Officer had submitted the inquiry report dated 12.11.2009 and the Disciplinary Authority had proposed for infliction of minor punishment upon the petitioner, suddenly there was a sea change in the mindset of the Disciplinary Authority and it was then decided to amend the memo of charges and initiate a de novo inquiry, which was then done vide memo dt. 12.7.2010. It would suffice to state, at this juncture that such action, on the part of the Disciplinary Authority to initiate a de novo inquiry, is de hors the provisions contained in the Rules 2005 as also contrary to the judgment, rendered by the Hon'ble Apex Court in the case of *Kanailal Bera* (supra) and the judgment, rendered by the learned Division Bench of this Court in the case of *Md. Shamim Akhtar* (supra), inasmuch as instead of accepting or rejecting the findings of the enquiry officer



dated 12.11.2009 (first inquiry report), the Disciplinary Authority, has illegally proceeded to amend the charges and order for fresh inquiry, which definitely is not in consonance with the settled law, hence, the entire departmental enquiry, initiated vide memo dated 19.03.2009, as also the one, initiated vide memo dt. 12.07.2010, the inquiry reports dated 12.11.2009 and 30.03.2011 as also the order of punishment dated 24.02.2012 are fit to be set aside on the aforesaid ground alone.

11. However, this Court further finds that the present case is a case of no evidence, inasmuch as neither it has been proved that any pecuniary loss was caused to the Respondents nor it has been proved that it was the petitioner, who had opened the bank account in Dehti PACS, inasmuch as it is an admitted fact, which is also apparent from the aforesaid two inquiry reports that the bank account had been opened in Dehti PACS, prior to the posting of the petitioner as Block Development Officer, Palasi, apart from the fact that as far as the second charge of misuse of funds is concerned, the inquiry report dated 23.1.2010 of the Block Development Officer, Palasi, which is the main evidence, sought to be relied upon by the Respondents, was neither brought on record nor given to the Inquiry Officer nor supplied to the petitioner, as is apparent from internal page



no. 6 of the second inquiry report dt. 30.03.2011. Therefore, this Court is of the firm opinion that the entire inquiry proceedings are based on surmises & conjectures, inasmuch as the prosecution has failed to bring on record any evidence to prove the charges levelled against the petitioner, hence, the present case is a case of no evidence, consequently, the inquiry report dated 30.03.2011 is held to be no-nest and void in the eyes of law, thus the same is quashed. As a consequence of quashing of the inquiry report dt. 30.03.2011, the impugned order of punishment dated 24.02.2012 has got no legs to stand since the same also rests on no evidence, apart from the fact that de novo inquiry is not permissible under the law, as has already been held herein above in the preceding paragraphs, thus, the same is also set aside. The aforesaid aspect of the matter is squarely covered by the judgments, rendered by the Hon'ble Apex Court in the cases of *Kanailal Bera* (supra), *Roop Singh Negi* (supra), *Kuldeep Singh* (supra), *Saroj Kumar Sinha* (supra) & *S.K.Kapoor* (supra).

12. Now, coming to the issue of grant of consequential benefits and back wages as a consequence of quashing of the order of punishment of dismissal from service dated 24.02.2012, this Court finds that the disciplinary proceedings have been attended with mala fides and since the action of the disciplinary



authority reeks of a design to somehow inflict punishment of dismissal upon the petitioner herein, this Court deems it fit and proper to direct for grant of 100% back wages to the petitioner along with all other consequential benefits, as may be admissible to the petitioner herein in view of the law laid down by the Hon'ble Apex Court in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Others*, reported (2013) 10 SCC 324 as also in view of the gross injustice meted out to the petitioner by the Respondents, which are demonstrated sufficiently from the records of the case.

13. Having regard to the facts and circumstances of the case, the order of punishment dated 24.02.2012 as also the inquiry report dated 30.03.2011 stand quashed and it is held that the petitioner would be entitled to full back wages along with other admissible consequential benefits.

14. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.09.2023
Transmission Date	NA

