

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9301 of 2023

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Ran Vijay Kumar, S/o Sri Madan Singh, Resident of Village and P.O.-
Chipura Khurd, P.S.- Gaurichak, Distict- Patna.

... .. Petitioner

Versus

1. The Union of India through the D.G. cum Secretary, Department of Posts,
Dak Bhawan, New Delhi 110001.
2. The Chief Postmaster General, Bihar Circle, Patna 800001.
3. The Director of Postal Service (HQ), O/o the Chief Postmaster General,
Bihar Circle, Patna 800001.
4. The Sr. Superintendent of Post Offices, Patna Division, Patna 800004.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Hemant Kumar Karan, Advocate
For the Respondent/s	:	Mr. Pradeep Kumar, Advocate
		Mr. Kumar Sachin, CGC
		Mr. Sushant Praveer, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 30-11-2023

The present writ petition is preferred against the order dated 06.09.2022 passed in O.A/050/00527/2017 by the Central Administrative Tribunal, Patna Bench, Patna (in short CAT).

2. Petitioner Ran Vijay Kumar, who was working as GDSBPM and who was handling disbursement of Old Age Pension, there were three complaints that petitioner was not timely disbursing the Old Age Pension. On these allegations,



petitioner was subjected to departmental inquiry. Charge Memo was issued on 07.09.2011. The petitioner had denied the alleged charges on 22.10.2011.

3. Disciplinary Authority was not satisfied with the petitioner's explanation to the charge memo and proceeded to appoint Inquiring Officer and Presenting Officer to proceed with the departmental inquiry against the petitioner. The Inquiring Officer submitted inquiry report while holding that the charges levelled against the petitioner were proved, such a report dated 24.09.2015 was forwarded to the Disciplinary Authority to take further action in the matter.

4. Disciplinary Authority issued a show cause on 29.09.2015 along with the Inquiring Officer's report. The petitioner had submitted his explanation to the show cause notice dated 29.09.2015 read with the Inquiring Officer's report on 13.10.2015. Taking note of these material information Disciplinary Authority – Sr. Supdt. Of Post Offices, Patna Division, Patna proceeded to impose the penalty of removal from service on the petitioner vide order dated 15.03.2016 and Appellate Authority order dated Nil August, 2017 confirmed the disciplinary authority's order.

5. The petitioner had earlier approached the CAT in



filing O.A./050/00273/2016, the same was dismissed on 05.04.2016 asking the petitioner to exhaust the remedy of appeal before the Appellate Authority. In this backdrop, the petitioner has assailed the order of the Disciplinary Authority as well as Appellate Authority before the CAT in OA/050/00527/2017.

6. On 06.09.2022, CAT dismissed the petitioner's original application, hence the present petition.

7. Learned counsel for the petitioner submitted that in the list of documents, three complaints have been cited and list of witnesses four of them have been cited, whereas author of the complaints Sita Devi and Sundari Devi have not been examined and cross-examined, who are the relevant witnesses. Further, it is submitted that imposition of penalty of removal from service would be too harsh in the absence of any alleged charges relating to financial irregularities. It is submitted that the alleged charge is only relating to delay in disbursement of Old Age Pension to the pensioners.

8. Learned counsel for the petitioner further submitted that CAT has not apprise non-examination of prime witnesses-complainants. On the other hand, behind the back of the petitioner, Sita Devi and Sundari Devi were stated to have



deposed before the Inspector of Post, South Central Sub Division, Patna, who has conducted preliminary inquiry and before whom they have deposed. Therefore, examination of Inspector of Post, namely, Tanvir Ahmad. Author of the complaints were required to be examined in departmental inquiry any evidence adduced in the preliminary inquiry and recording of such statement by the preliminary Inquiring Officer was behind the back of the petitioner. In other words, petitioner has not been provided opportunity of cross-examining those witnesses, who have deposed before the preliminary Inquiring Officer, therefore, the finding of the CAT non-examination of complainants, namely, Sita Devi and Sundari Devi are not material is incorrect. On this issues, learned counsel for the petitioner cited decision of the Apex Court in the case of **S. C Girotra vs. United Commercial Bank (UCO Bank)** reported in **1995 Supp. (3) SCC 212**. He is also relying on Apex Court decision in the case of **Union of India and Ors. Vs. Dalbir Singh** reported in **(2021) 11 SCC 321**, wherein the principle has been laid down under what circumstances courts can interfere in respect of departmental inquiry matters. In the present case it is a case of no evidence to the extend that prime witnesses-complainants have not been examined and cross-examined.



9. *Per contra*, learned counsel for the respondents resisted each of the contention of the petitioner and submitted that there is no infirmity in the order of removal, appellate authority's order and CAT order. It is submitted that departmental witness Tanvir Ahmad has been examined which suffice to prove the alleged charge levelled against the petitioner. It is submitted that complainants Sita Devi and Sundari Devi, who have deposed before the Tanvir Ahmad, who held preliminary inquiry and who has been examined in the inquiry, therefore, there is no infirmity in non-examination and cross-examination of prime witnesses-complainants, hence no interference is called for.

10. Heard the learned counsel for the respective parties.

11. Dates and events are not disputed insofar as initiation of inquiry and its conclusion. Learned counsel for the petitioner submitted that CAT has committed error in not appreciating in respect of non-examination of the witnesses-complainants Sita Devi and Sundari Devi. On the other hand, examination of witness namely preliminary inquiring officer is not sufficient for the reasons that whatever the evidence adduced before the preliminary Inquiring officer is behind the



back of the petitioner. Further, author of the preliminary Inquiring Officer, namely, Tanvir Ahmad, who has furnished preliminary inquiry report for the purpose of conducting departmental inquiry against the petitioner cannot adduce evidence against the petitioner, since, he had furnished preliminary inquiry report and he was biased against the petitioner in the guise of defending his report. Therefore, examination of prime witnesses-complainant, namely, Sita Devi and Sundari Devi are relevant. In other words, petitioner has not been provided opportunity of cross-examining those prime witnesses. Apex Court decision in the case of ***S.C Girotra vs. United Commercial Bank (UCO Bank)*** (supra) in which Apex Court held that author of the document is required to be examined and cross-examined. In the present case complaints of Sita Devi and Sundari Devi have been taken note of in the departmental inquiry and inquiring officer as well as Disciplinary Authority are relying on those material information and the same cannot be taken note of against the petitioner in the absence of providing cross-examination of opportunity in those prime witnesses.

12. The reasons assigned by the CAT that they need not examine complainants, since they have adduced evidence



before the preliminary inquiring officer, namely, Tanvir Ahmad, it is incorrect in view of the Apex Court decision.

13. No doubt, CAT is relying on ***B.C. Chaturvedi Vs. Union of India & Ors.*** reported in ***(1995) SCC (6) 749*** where the principle laid down is that Courts and Tribunals not to interfere in a departmental inquiry, however, it is a case of no evidence. In other words, prime witnesses have not adduced in a departmental inquiry. Whatever the evidence adduced by them was before the preliminary Inquiring Officer's. The preliminary Inquiring Officer's report is behind the back of the petitioner. In other words, petitioner has not been provided opportunity of adducing his evidence or examination or cross-examination of prime witnesses-complainants.

14. The Apex Court in ***Dalbir Singh's*** (Supra) case laid down certain principles under what circumstances writ Court can interfere in a departmental inquiry in paragraphs No. 21 and 22, it is held as under :

“21. This Court in Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under : (SCC pp. 616-17, paras 12-13)

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary



proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

(under line supplied)

13. Under Articles 226/227 of the Constitution of



India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based;*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

22. In another judgment reported as B.C. Chaturvedi v. Union of India, it was held that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. This Court held as under : (SCC pp. 759-60, paras 12-13)

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether



the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of



India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

Further in case of **Roop Singh Negi vs. Punjab National Bank and Others** reported in (2009) 2 SCC 570 in paragraphs no. 14 and 23, it is held as under:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. 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.”

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the

(Under line supplied)

basis of selfsame evidence should not have been



taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

Further in case of ***Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and Others*** reported in (2001) 1 SCC 182 in paragraphs no. 21 and 22, it is held as under:

“21. Incidentally, Hidayatullah, C.J. in Channabasappa Basappa Happali v. State of Mysore [(1971) 1 SCC 1 : AIR 1972 SC 32] recorded the need of compliance with certain requirements in a departmental enquiry — at an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence — on this state of law, a simple question arises in the contextual facts. Has this been complied with? The answer however on the factual score is an emphatic “no”.

“22. The sixty-five page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved — what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only?



The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records — unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it — can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of Denby (William) and Sons Ltd. v. Minister of Health [(1936) 1 KB 337 : 105 LJKB 134 : 154 LT 180] may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

“I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance



with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in Sharp v. Wakefield [1891 AC 173 : 60 LJ MC 73 : 64 LT 180 (HL)] (AC at p. 179) is important to consider with reference to the exercise of such discretion. He there said:

‘ “Discretion” means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: Rooke case [(1598) 5 Co Rep 99b, 100a] ; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.’ ”

15. The principle laid down in the aforementioned decisions - are applicable to the case in hand.

16. In view of these facts and circumstances, the CAT has committed error in not interfering with the impugned order of removal and its confirmation in Appeal. Hence, the impugned order dated 15.03.2016 (Annexure-P/7), Appellate Authority order dated Nil August, 2017 (Annexure-P/12) and order of CAT dated 06.09.2022 (Annexure-P/13) are set aside.

17. The concerned respondent/Disciplinary Authority is hereby directed to reinstate the petitioner to the post held by him and extend all service and monetary benefits from



the date of removal till reinstatement. The same shall be calculated and disburse in favour of the petitioner within a period of three months from the date of receipt of this order.

18. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Manish/-

AFR/NAFR	N.A.F.R
CAV DATE	N.A
Uploading Date	06.12.2023
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