

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1719 of 2018

In

Civil Writ Jurisdiction Case No.25327 of 2013

-
1. The High Court of Judicature at Patna through the Registrar General
 2. The Registrar Administration, High Court of Judicature at Patna
 3. The Judge Incharge Administration, Civil Court, Kaimur at Bhabhua.
 4. The Registrar Judicial, Civil Court, Kaimur at Bhabhua.

... .. Appellant/s

Versus

Birendra Pandey Son of Late Laxman Pandey Resident Of Village- Sihari,
Police Station.- Haspura, District- Aurangabad, posted as Clerk, Civil Court,
Kaimur at Bhabhua.

... .. Respondent/s

with

Letters Patent Appeal No. 914 of 2019

In

Civil Writ Jurisdiction Case No.25327 of 2013

Birendra Pandey Son of Late Laxman Pandey Resident Of Village- Sihari,
Police Station.- Haspura, District- Aurangabad, Retired Clerk, Civil Court,
Bhabhua, Kaimur.

... .. Appellant/s

Versus

1. The High Court of Judicature at Patna through The Registrar General
2. The Registrar (Administration), High Court of Judicature at Patna.
3. The Judge Incharge Administration, Civil Court, Kaimur at Bhabhua.
4. The Registrar, Civil Court, Kaimur at Bhabhua.



... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1719 of 2018)

For the Appellant/s : Mr.Piyush Lall

For the Respondent/s : Mr.Ashok Kumar Garg

(In Letters Patent Appeal No. 914 of 2019)

For the Appellant/s : Mr.Ashok Kumar Garg

For the Respondent/s : Mr.Piyush Lall

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)

Date : 22-02-2023

L.P.A. No. 1719 of 2018 has been preferred by the High Court of Judicature at Patna being aggrieved by the judgment and order of the learned Single Judge passed in C.W.J.C. No. 25327 of 2013 on 27.06.2018, whereby the learned Single Judge has issued direction to reinstate the respondent/Sri Birendra Pandey in service with all consequential benefits and continuity of service with 50% back wages from the date of dismissal to the date of reinstatement. The respondent/Sri Birendra Pandey has also preferred L.P.A. No.914/2019 against the above-mentioned judgment with a prayer that not only 50% of the back wages, but the entire back wages should be



given to him. Both the appeals are being disposed of by this common judgment.

Brief facts of the case is that a departmental proceeding was initiated against Mr. Birendra Pandey (hereinafter referred to as respondent), who was posted as a Clerk in Civil Courts, Bhabhua. He came in service in the year 1981 in the district of Rohtas, but subsequently transferred to the District of Bhabhua.

The District Judge, Kaimur at Bhabhua called for an explanation from the respondent as to how he had deposited a huge amount of money in his bank Account nos. 9284 and 3260, in Bhojpur Rohtas Gramin Bank and State Bank of India. This explanation was asked through letter dated 08.10.2001. The respondent furnished his explanation through letter dated 15.02.2001. Thereafter, a preliminary enquiry was initiated. The explanation given by the respondent was not found satisfactory; as such, a departmental proceeding was initiated. The charges framed against the respondent are quoted herein below:-



“(1) That it is alleged that you had indulged yourself in the affairs of a chit fund company, which was running in the name and style as “KRISHI EXPORT CUM. COMPANY”, at Bhabhua without taking prior permission of the department and thereby, violated the established norms of Bihar Government Servants Conduct Rules.

(2) That it is also alleged that when the said Company left the place by grabbing the amounts of its depositors you obtained huge amounts from the company get the cases lodged against the said company by its depositors hushed up and thereby, you acquired huge amounts as it appears from your bank accounts bearing no. 3260 (SBI Bhabhua) and 9284 (Bhjopur Rohtas Gramin Bank), Bhabhua.

(3) That it is also alleged that you have taken bribe to be paid to some judicial officers to get cases lodged against the said Company disposed of and in that consequences, you approached the Deputy Superintendent of Police and other police officials, too.

(4) That it is alleged that you have got yourself associated with some veteran criminals, facilitated them in their criminal activities like kidnapping etc. and made yourself involved in such criminal activities.”



The respondent participated in the departmental proceeding, furnished his explanation and also cross-examined all the sixteen witnesses examined on behalf of the Administration.

After hearing the arguments of both the parties, the disciplinary authority (District Judge, Bhabhua) passed an order dated 19.01.2009 holding the respondent guilty of first two charges and awarded a punishment of reduction to a lower stage in time scale of pay since the date of order with cumulative effect and further directed that he be not posted on any responsible post for five years.

Against that order, the respondent preferred an appeal before the appellate authority, i.e., the High Court, Patna, in its administrative side. The Appellate Authority found the punishment to be inadequate and directed the respondent to show cause as to why the punishment should not be enhanced and why major punishment should not be awarded to him.



After receiving the show cause reply given by the respondent, the appellate authority was of the opinion that the punishment awarded to the respondent was inadequate. In the opinion of the Appellate Authority, the respondent should have been awarded major punishment of dismissal from service. Thereafter, the disciplinary authority issued an order dated 20.09.2013, whereby the respondent was dismissed from service.

It is the contention of the respondent that he had received memo dated 01.05.2002 only along with article of charges with anonymous complaint and he was not provided with the copies of the documents enclosed with articles of the charges. When the respondent demanded the copies of those documents vide a petition dated 11.02.2003, he was replied that the basis of charge was only the anonymous complaint, which was already provided to him with the articles of charges.

The learned Single Judge has held that the departmental proceeding itself was bad in the eyes of law as there was no material before the



disciplinary authority for initiation of the proceeding.

We are not in agreement with the learned Single Judge for the simple reasons that the disciplinary authority did not initiate the proceedings merely on the basis of the anonymous complaint. After the receipt of the anonymous complaint, a preliminary enquiry was conducted. During the enquiry, an explanation was called for from the respondent. He furnished his explanation which was not found to be satisfactory by the disciplinary authority. The disciplinary authority submitted its report to the High Court, and on the orders of the High Court, the disciplinary proceeding was initiated.

The respondent has raised contention that the statements of bank accounts obtained by the disciplinary authority were not made enclosures of article of charges, although those bank statements were already provided to the respondent by the disciplinary authority. The learned Single Judge, relying upon the decision of *Hari Sharan Thakur Vs.*



State of Bihar and others, reported in 2008 (2) PLJR 49, has held that due to non-supply of the bank statements to the respondent, the initiation of the disciplinary proceeding was bad in the eyes of law.

In our view, this contention has no substance. When those bank statements were already furnished on the respondent, he cannot take a plea that he was not provided proper opportunity of being heard, merely because those bank statements were left to be annexed with the article of charges.

The learned Single Judge has also held that sixteen enquiry witnesses were examined, who supported the contents of the allegation but the list of the witnesses was not furnished on the respondent prior to their examination.

The appellant has explained the reasons as to why the list of witnesses could not be provided to the respondent. As a matter of fact, at the inception of proceedings, there were no witnesses but when the proceeding started, the



witnesses started appearing suo motu with a prayer that they wanted to depose in that proceeding and their prayer was allowed by the disciplinary authority. There was no list of witnesses, as such, there was no occasion of its supply to the respondent. The respondent cross-examined all the sixteen witnesses at length. As such, he cannot say that he was not provided an opportunity to rebut the evidence of those witnesses. He was given ample opportunity to cross-examine those witnesses. He cannot therefore claim that the principles of natural justice have been violated.

The learned Single Judge has mentioned that the disciplinary authority has taken extraneous materials while considering the enquiry report. But it has not been mentioned in his judgment as to what were those extraneous materials, which were considered. The charges framed against the respondents are clear and explicit. The inquiry officer has considered the evidence of sixteen witnesses and other evidences emerging during



the course of enquiry, and only after considering those materials, the delinquency of felony was established, on the basis whereof the order of dismissal from service was passed.

The learned Single Judge has been pleased to hold that the charges framed against the respondent were vague, indefinite and unspecific. Relying upon a decision of the Hon'ble Supreme Court in *Anant R. Kulkarni Vs. Y.P. Education Society & others, reported in (2013) 6 SCC 515*, he has held that if the charge-sheet is vague, the entire proceeding gets vitiated.

All the four charges framed against the delinquent (respondent) have been quoted above. The disciplinary authority did not find charge nos. 3 and 4 as proved; and consequently, the respondent was exonerated from charge nos. 3 and 4. He was found guilty only for charge nos. 1 and 2, which are as follows:-

“(1) That it is alleged that you had indulged yourself in the affairs of a chit fund company, which was running in the name and style as “KRISHI EXPORT CUM. COMPANY”, at Bhabhua



without taking prior permission of the department and thereby, violated the established norms of Bihar Government Servants Conduct Rules.

(2) That it is also alleged that when the said Company left the place by grabbing the amounts of its depositors you obtained huge amounts from the company get the cases lodged against the said company by its depositors hushed up and thereby, you acquired huge amounts as it appears from your bank accounts bearing no. 3260 (SBI Bhabhua) and 9284 (Bhjopur Rohtas Gramin Bank), Bhabhua.

From bare perusal of charge nos. 1 and 2, we find that the charges are clear and explicit. An ordinary person can easily understand the recitals and contents of the charges. Unless a person, due to ambiguity of the charges is misled or prejudiced, he cannot take the plea that the charges are vague. We do not find any ambiguity in the charges, to which the respondent claims to have misled.

On the basis of above-noted observations, we do not find the judgment and order of the learned



Single Judge to be sustainable in the eyes of law.

Accordingly, the judgment dated 27.06.2018 passed in C.W.J.C. No. 25327 of 2013 is hereby set aside. L.P.A. No. 1719 of 2018 is allowed and L.P.A. No. 914 of 2019, preferred by the respondent, is hereby dismissed.

The learned District Judge, Kaimur at Bhabhua is directed to recover all the amounts paid to the respondent in compliance of the impugned order.

(Nawneet Kumar Pandey, J)

I agree -

(Ashutosh Kumar, J)

Mahesh/HR

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