

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.79 of 2022

In

Civil Writ Jurisdiction Case No.16204 of 2016

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1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Animal and Fisheries Resources Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Dr. Rakesh Kumar Panjiyar Son of Shri Brahmdeo Panjiyar Resident of Flat No. 401, Amar Kunj Apartment, Vivekanand Path, North Shri Krishna Puri, P.S. - Shri Krishna Puri, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Shankar Prasad, A.C. To G.P.-14
For the Respondent/s : Mr. Abhinav Srivastava, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 15-05-2024

Heard the parties.

2. The legality of the order/judgment dated 06.10.2021 passed by the learned Single Judge in CWJC No. 16204 of 2016, is questioned by the State of Bihar and its authority by filing the present Letters Patent Appeal. The facts which are not in dispute are culled out from the order/judgment of the Writ Court and are briefly stated hereinbelow.

3. In the year 2006 while the writ petitioner/appellant was posted as Block Veterinary Officer at Fatuha Block, on a complaint of demand of bribe made by the Secretary of School Education Committee, Bali, a trap was laid



by Vigilance team. The writ petitioner/appellant was apprehended by the Vigilance team while accepting bribe money from the complainant on 23.11.2006. An FIR bearing Vigilance P.S. Case No. 82 of 2006 for the offence punishable under Section 7/13(2) read with Section 12(1)(d) of the Prevention of Corruption Act, 1988 was registered. The petitioner was put under suspension on account of his arrest in the criminal case. On the release of the petitioner from judicial custody, he was allowed to join his post, however, he was again put under suspension on the ground of pendency of criminal case.

4. The disciplinary proceeding was initiated against the petitioner with the issuance of memo of charge dated 14.03.2008 (Annexure 7 to the writ petition). The charges allegedly made against the writ petitioner was with respect to a demand of Rs. 20,000/- as bribe from Braj Kishore Singh, Secretary, School Education Society, Primary School, Bali, Fatuha Block, District Patna.

5. It is further alleged that on request made by the complainant, the petitioner agreed to accept Rs. 10,000/- as bribe; out of which Rs. 3,000/- was decided to be paid as first installment. This fact was verified by constable Prakash Kuzur



who was present there, when the said Braj Kishore Singh and the petitioner were discussing the said transaction.

6. A team led by Deputy Superintendent of Police, Sri Amzad Ali, apprehended the petitioner while taking a sum of Rs. 2,500/- as bribe from Braj Kishore Singh. The currency notes, allegedly recovered from the petitioner's possession, were tallied with the numbers mentioned in the pre-trap memorandum. The petitioner was arrested and sent to judicial custody where he remained from 23.11.2006 to 17.10.2007. The memo of charge was served to the petitioner and asked to submit his explanation within ten days. The writ petitioner filed his explanation, categorically denying the allegation of having demanded or accepted bribe from the complainant.

7. It was the specific plea of the writ petitioner that save and except the FIR registered by the Vigilance Investigation Bureau, no evidence was brought or cited to establish the charge against the petitioner. The FIR alone did not have any evidentiary value, unless it is corroborated and proved. It was also the plea of the writ petitioner that the charge-sheet does not disclose as to when the demand of bribe was made and as to when he had accepted the same. The charges were vague



and non-specific and therefore unsustainable. It was also pleaded that he was maliciously implicated for ulterior reasons; these were the pleas contained in his explanation.

8. A request was also made for supply of certain documents which according to the petitioner were germane for effective explanation. Despite the demand raised by the petitioner for supply of relevant documents, the same could not be made available to him and the department asked the petitioner to contact the Special Court, Vigilance to obtain the documents which were required by him, for submitting effective explanation.

9. The writ petitioner insisted for supply of documents however, the request was not acceded to and vide letter dated 30.06.2009 he was asked to submit his explanation within ten days. The department by the said letter clarified that the copy of the FIR, etc had already been sent to him as evidence in support of the charge framed against him. In the circumstances as noted hereinabove, the writ petitioner approached before this Court in CWJC No. 13355 of 2009, which came to be disposed of vide order dated 14.10.2009.

10. The learned Writ Court in the afore-noted case opined that if the documents asked for by the petitioner



were not germane to the enquiry, the officers were at liberty to pass appropriate orders however, if the documents were asked for, non-supply of the same without reasons that they are not germane, might vitiate the departmental enquiry. The learned Writ Court further observed that if the petitioner asked for specified documents, the same was required to be considered by the respondents in the manner discussed in the order.

11. The Writ Court further directed to consider the claim of the petitioner for revocation of suspension keeping in mind the inordinate delay in the criminal trial. In pursuance to the order of the Writ Court, the suspension of the petitioner was revoked vide order dated 05.03.2010. All of a sudden nearly four years thereafter, vide resolution contained in memo no. 48, dated 24.01.2014, the enquiry officer and the presenting officer were appointed. The petitioner was asked to submit his written statement of defense.

12. In response thereto, while denying the allegation made in the memo of charge, the petitioner again reiterated his request for supply of documents in the light of the observation of the Writ Court dated 14.10.2009. In the enquiry, the presenting officer supported the allegation levelled in the FIR. During the course of enquiry, the petitioner again filed a



representation, requesting the enquiring authority to call for the witnesses whose names figured in the FIR as eye witnesses. The enquiry authority did not respond to the prayer and proceeded with the enquiry and submitted its report on 07.03.2014, holding charges against the petitioner as proved.

13. The disciplinary authority sought his response on the enquiry report after serving a copy of the same upon him, by way of second show-cause notice. The petitioner submitted his reply on 31.03.2014, pointing out the infirmities in the enquiry and the averments in support of his defence. The disciplinary authority finally inflicted the punishment of dismissal from service. The petitioner filed an application for review of the order of dismissal which also came to be dismissed, the copy of which is produced as Annexure 38 to the writ petition.

14. The order of punishment of dismissal as well as rejection of review petition came to be challenged in CWJC No. 16204 of 2016. The learned Single Judge having found the final report of the enquiry authority without evidence and, the petitioner's reply submitted in response to the report by the enquiry authority not taken into account by the disciplinary authority, set aside the order of dismissal as well as order in



review. The State and its officials being dissatisfied with the order of the learned Single Judge, has preferred this Letters Patent Appeal.

15. The learned Government Advocate while assailing the impugned order under appeal has submitted that the learned Single Judge failed to appreciate that only the decision making process can be challenged before the court of law and decision of disciplinary authority ought not to be interfered with. The High Court is not a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are followed or not.

16. It was also urged before this Court that if the order of punishment of dismissal and reviewing authority suffers from any technical defects or in violation of the principles of natural justice, the matter ought to be relegated to the authorities concerned to proceed the departmental proceeding afresh from the stage where the defect stood set aside.

17. Learned Government Advocate for the



appellant adverting to the memo of charge has further contended that the charges were based upon documentary evidence, which were official in nature and, as such, the witnesses were not required to prove the same. Moreover, the writ petitioner was arrested by the Vigilance Investigation Bureau while accepting the bribe and the charges were proved.

18. Reliance has also been placed, on a decision of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors. Vs. Rajit Singh***, reported in ***2022 (2) PLJR (SC) 196***. In a case where enquiry is not conducted properly and the same is in violation of the principles of natural justice in that case, it was held the Court cannot and must not direct for reinstatement of the employee and the matter is to be remanded to enquiry officers/ disciplinary authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed. The enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge-sheet, which are alleged to have not been given to the delinquent officer; was the mandate of the Hon'ble Supreme Court.

19. Countering the afore-noted submissions advanced on behalf of the appellant, the learned Advocate for



the writ petitioner –respondent herein has taken this Court to the relevant paragraphs of the order/judgment of the Learned Single Judge, leading to setting aside of the order of punishment of dismissal and the order in review. It is further contended that it is a case of no evidence and the learned Single Judge has rightly set aside the impugned order and reinstated the petitioner.

20. We have heard the learned Advocates for the respective parties and anxiously perused the materials available on record. Charge of acceptance of bribe or corruption in a disciplinary proceeding undoubtedly requires to be proved to the hilt as it brings civil consequences upon the employee concerned. On the same charges he would be liable to be prosecuted and is also liable to suffer severest penalty, therefore the Courts in umpteen number of cases held that such a serious charge of quasi criminal nature is required to be proved scrupulously beyond any doubt and to the hilt. However the standard of proof varies while in a criminal trial it is proof beyond doubt in a domestic enquiry, it is preponderance of probability.

21. Admittedly the memo of charge, produced as Annexure 7 to the writ petition contains the self same allegation for which the criminal case was instituted. The allegation of demand was made by the Secretary of the School Education



Committee, namely Braj Kishore Singh leading to constitution of a vigilance team. Subsequently a trap was laid and the petitioner was arrested which resulted into registration of the FIR bearing Vigilance P.S. case No. 82 of 2006. Except the FIR as noted hereinabove, the memo of charge does not contain the list of the witnesses, to prove the charges.

22. It is the admitted fact that consistently the petitioner was praying for supply of relevant documents and also made request and filed representation for summoning of the complainant and witnesses for their examination but not a single witness has been summoned. Non-examination of complainant during departmental proceeding leads to denial of an opportunity to a Government servant of cross-examination is the mandate of the Hon'ble Supreme Court in the case of ***Commissioner of Police, Delhi & Ors. vs. Jai Bhagwan 2011 (6) SCC 376.***

23. In case of ***Roop Singh Negi vs. Punjab National Bank and Ors, 2009 (2) SCC 570***, the Hon'ble Supreme Court in no uncertain terms has held that the charges levelled against the delinquent officer must be proved in the enquiry. 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 persons itself could not be treated to be evidence in the disciplinary proceeding. Mere tendering of FIR and documents, would not prove the contents thereof and cannot be treated as evidence on mere production by the Presenting Officer. Witnesses, who are competent to prove the documents are to be examined.

24. The Hon'ble Supreme Court while dealing with the departmental proceeding, where the enquiry was based on the confessional statement made to the police and other material culminated in a penalty, held such evidence to be inadequate. In the said premise, in ***Roop Singh Negi (supra)*** the Hon'ble Supreme Court in paragraph 15 has observed as follows:-

“15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had



indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

25. In the case in hand admittedly the FIR was registered on the basis of a complaint made by one Braj Kishore Singh and the alleged trap was laid by a vigilance team. The name of some of the constables and others have been mentioned as eye witnesses. Neither the complainant nor any of the witnesses, despite request made by the petitioner to summon them, has been examined and, as such, the writ petitioner has not been accorded any opportunity of cross-examination. The enquiry officer who was to act as an independent quasi-judicial authority, has clearly erred in relying upon the FIR, which is nothing but an allegation having only force of corroborative evidence, the contents of which are yet to be proved in a criminal trial.

26. The charges leveled in a departmental proceeding are to be proved on the basis of preponderance of probabilities but there must be atleast some semblance of proof by way of evidence required to be adduced as mandated under



the Bihar Government Servant (Classification, Control and Appeal Rules, 2005).

27. Apart from the infirmities as noted hereinabove, there is no compliance of Rule 17(3)(4) and (11) of the Bihar Government Servant (Classification, Control and Appeal Rules, 2005). The petitioner has neither been provided the required documents as were sought for nor is there any list of witnesses to prove the charges. Trite it is that mere production of a document or marking of a document as exhibit, does not prove the contents thereof. Either it requires oral evidence or the documents relied having been special status not required to be proved.

28. We have also carefully examined the order of dismissal as well as the order rejecting the review petition. There is neither any discussion of the show-cause reply filed by the petitioner nor any consideration thereof except the finding that the charges stand proved in the enquiry. The review order is also reiteration of the dismissal order.

29. The learned Single Judge has rightly relied on a decision of the Hon'ble Supreme Court in the referred in the case of *Punjab National Bank & Ors. vs. K. K. Verma (2010) 13 SCC 494* wherein it was held that the right to



represent against the finding of the enquiry officer is not disturbed in any way and denial thereof will make the final order vulnerable, thus the obligation is cast upon the disciplinary authority to have applied its mind before inflicting any order of punishment based upon enquiry report.

30. Coming to the reliance placed by the learned Government Advocate on a decision in the case of ***Rajit Singh (supra)***; with utmost regard, it needs no reiteration that in a case where it is found that the enquiry is not conducted properly and/or the disciplinary proceeding is in violation of principles of natural justice, the matter ought to be remanded to the enquiry officers/disciplinary authority to proceed further with the enquiry from the stage of violation of the principles of natural justice. But that is a case in which the purported defect causes prejudice to the charge-sheeted employee and to not to correct the defects in enquiry due to its mishandling.

31. However, the case in hand, the fact is otherwise. The order of punishment and the reviewing order have not been set aside on account of technical reason or mere violation of the principles of natural justice but for the reason of the impugned order being based on perverse finding without any evidence; vitiating the entire proceeding. Hence in the opinion



of this Court, the matter is not required to be relegated for fresh proceeding.

32. Apart from the finding recorded by the enquiry authority based on no evidence, the disciplinary authority has also failed to take into account the petitioner’s reply submitted in response to the report of the enquiry authority, are the reasons for interference. A similar error has crept in the order in review too.

33. Thus, we are of the opinion that the order/judgment under appeal is legal, valid and justified and does not require any interference.

34. The Letters Patent Appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

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