

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.389 of 2024

In
Civil Writ Jurisdiction Case No.3414 of 2020

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Ram Lagan Ram son of Late Ganesh Ram resident of Village- Alisherpur,
P.O.- Gihuli, P.S.- Patahin, District-East Champaran, Motihari

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land and Revenue, Government of Bihar, Patna
2. The Commissioner Tirhut Division, Muzaffarpur
3. The District Magistrate East Champaran, Motihari
4. The Additional Collector cum District Public Grievance Redressal Officer East Champaran, Motihari

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjeet Kumar, Advocate Mr. Shikhar Mani, Advocate Mr. Rajnish Prakash, Advocate Ms. Lakshmi Kumari, Advocate
For the Respondent/s	:	Mr.Additional Advocate General 12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-08-2024

On allegations of demand and acceptance of bribe, originating from a trap case registered, led to the appellant's dismissal. The appellant a clerk in the office of the Certificate Officer, East Champaran at Motihari was alleged to have been caught red handed accepting a bribe of Rs. 10,000/-. The accusation was that he had demanded a bribe of Rs. 40,000/- for the purposes of, recall of a warrant issued in a certificate



case and providing easy installments to settle the total dues demanded. The Complainant approached the Vigilance Investigation Bureau who laid a trap in which the petitioner was caught red handed. An FIR was registered, based on which a show cause notice was issued and the District Magistrate, East Champaran at Motihari dismissed the appellant from service.

2. The appellant approached this Court with CWJC No. 8298 of 2014 (Ram Lagan Ram Vs. the State of Bihar & Anr) which was allowed on the ground of no disciplinary proceeding having been initiated. Though the punishment was set-aside, the matter was remitted to the District Magistrate, East Champaran at Motihari to proceed afresh in accordance with law. A disciplinary enquiry was held, based on the report of which the appellant was dismissed, which order is challenged herein.

3. While the writ petition was pending, an appeal filed also was rejected which was challenged by way of an interlocutory application in the writ petition. The learned Single Judge found that the petitioner has not denied that cash has been recovered from his possession and the mere fact that



witnesses were not examined at the enquiry is not a reason to throw out the allegation of misappropriation/irregularity found in a departmental enquiry, especially wherein the delinquent had admitted to the recovery of cash from his hands and the standard of proof is also preponderance of probability.

4. The learned Counsel for the petitioner Mr. Ranjeet Kumar pointed out that this is another instance of the saga of botched up departmental enquiries in the State of Bihar; which resorts to the practice of finding the delinquent employee guilty, without any evidence led and penalizing him without reasonable cause. Reliance is placed on the judgment of a Division Bench dated 18.07.2024 passed in ***LPA NO. 366 of 2024 (Rajendra Prasad Vs. The State of Bihar and Anr)*** in similar circumstances.

5. The learned Government Advocate on the other hand submits that it is a clear case of trap and there was recovery of cash from the delinquent employee. The recovery of cash has been admitted, in which circumstance the learned Single Judge had refused to interfere with the dismissal order based on the enquiry proceedings. The appellant was caught



red handed and he cannot wriggle out of the said circumstance which led to the registration of an FIR which was produced in the enquiry. There is no cause for interference either with the dismissal order or the judgment of the learned Single Judge, asserts the Government Advocate.

6. Admittedly, there was no witness examined in the enquiry. The FIR was produced, without any proof offered, which was supplied to the petitioner along with the chargesheet and this alone formed the material relied on by the Enquiry Officer. The earlier dismissal order was interfered with on the ground of no proceedings having been taken in accordance with law; i.e. absence of a disciplinary proceeding. In the present instance, the manner in which the enquiry was carried out clearly indicates that it was not in accordance with law and hence the defect pointed out earlier is not cured so far as there being no evidence led at the enquiry other than mere production of the FIR.

7. The learned Single Judge has referred to a number of judgments, wherein, the enquiry conducted was held to be not proper. In ***Kuldeep Singh Vs. Commissioner of Police & Ors.*** reported in ***(1999) 2 SCC 10*** while the Hon'ble



Supreme Court held that the Court under Article 226 of the Constitution of India could not sit in appeal over the findings and assume the role of an appellate authority in considering a punishment imposed, based on a disciplinary proceeding; it was also held that Courts can definitely interfere if there is no evidence to support the findings or the findings are such, which would not have been arrived at by an ordinary prudent man or the findings were perverse or made under the dictates of the superior authority.

8. The cited decision and the decision in the case of ***Anil Kumar Vs. Presiding Officer & Ors.*** reported in (1985) 3 SCC 378 emphasized the well-heeled principle that a disciplinary enquiry is a quasi-judicial enquiry regulated by the principles of natural justice and the Enquiry Officer being obliged to act judicially. ***Anil Kumar (supra)*** was a case where the enquiry officer was found to have not applied his mind to the evidence, since, but for setting out the names of the witnesses, the evidence laid was not discussed at all, which led to the finding of guilt, being termed as one arrived at on the *ipse dixit* of the Enquiry Officer. ***State of U.P. & Ors Vs. Saroj Kumar Sinha*** reported in (2010) 2 SCC 772, held that an Enquiry Officer acting in a quasi-judicial capacity, is



in the position of an independent adjudicator and even in the absence of the delinquent, his function is to examine the evidence presented by the department to see as to whether the evidence is sufficient to hold that the charges are proved.

9. *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya* reported in (2013) 10 SCC 324, considered the question whether the High Court was correct in setting aside the Award of back wages ordered by the Tribunal, while confirming the Tribunal's finding that the enquiry was *per se* illegal. Therein, the setting aside of the back wages was on the ground that there was no proof of non-employment of the delinquent while the rule applicable clearly prohibited a suspended employee from taking employment elsewhere. *Pawan Kumar Agarwala Vs. General Manager II and Appointing Authority, State Bank of India and Ors.* reported in (2015) 15 SCC 184, also held that if there is complete absence of evidence, the order of reinstatement sans full back wages is unjustified in law.

10. Though these decisions were referred to and copious extracts made from them; the impugned judgment failed to reckon the dictum in the said decisions. The learned



Single Judge also referred to the decisions relied on by the respondent-State; which too do not come to their aid. ***Iftekhar Alam Vs. The Chief General Manager, State Bank of India and Ors.*** reported in **2000 (4) PLJR 289**, held that judicial intervention in departmental proceeding cannot be to the extent of looking into the sufficiency of the material nor can there be re-appreciation of evidence to arrive at a different conclusion. We notice that in the present case there is no question of re-appreciation of evidence, since the ground of challenge, which stands established, is that there is no evidence at all led. When there is no material placed at the enquiry there is no question of looking at whether there is sufficient material and much less scope for re-appreciation of evidence; which is completely lacking.

11. *Kuldip Singh Vs the State of Punjab & Ors.*

reported in **(1996) 10 SCC 659**, was a case in which the disciplinary authority came to the conclusion that there was a statement made by the delinquent which was voluntary and true, which could be relied on and dismissed the delinquent without holding an enquiry. Therein, a Head Constable who was interrogated during the investigation into the murder of a Superintendent of Police admitted to have links with terrorists



and working for them. The confession was held to be sufficient material which could be acted upon by the Disciplinary Authority. The fact that it was made to the police, while in custody, was held to be of no consequence for reason of strict rules of the Evidence Act not applying to departmental proceedings. It was held that the disciplinary authority came to the conclusion that the statement was indeed voluntary and true and it could be acted upon and the High Court had also come to the conclusion that it was not reasonably practicable to hold an enquiry as contemplated under Article 311(2) of the Constitution of India; which was held to be invocation of *proviso* (b) to Article 311(2) of the Constitution of India. The fact that the delinquent employee had been acquitted of the charges in the criminal trial was also held to be of no consequence. It was in the peculiar circumstance of that case the aforesaid finding was rendered.

12. Looking at the facts of the present case, the allegation of the Complainant was that the appellant had demanded Rs. 40,000/- and the department alleged that while he was receiving Rs. 10,000/- he was caught red handed. In the reply to the first show cause notice itself, the delinquent had asserted that the allegation of demand of Rs. 40,000/- was



for providing easy installments to pay the total demand of Rs. 1,57,587; in the certificate proceedings, which on the face of it was unbelievable.

13. Further, it was pointed out that though the chargesheet alleged that the delinquent accepted bribe of Rs. 10,000/-; the post trap memorandum mentioned only Rs. 5000/- having been recovered from the delinquent. The allegation further was that when the accused along with others were apprehended in Motihari there was a law-and-order situation created by the employees, by reason of which they were taken to Muzaffarpur for recording their statement and the cash was recovered at Muzaffarpur. In the reply to the first show cause notice the delinquent had also alleged that the allegation of taking bribe is completely false. In the totality of the defence set up, it cannot be found that the delinquent had accepted the allegation of taking bribe or the cash having been recovered from his hands.

14. Specific contention taken in the reply is that the delinquent was framed by the Complainant and the Vigilance team. It was incumbent upon the department to prove the facts; for which the Complainant could have been examined



or at least the officials from the trap team of the Vigilance Department or the independent witnesses accompanying the Vigilance Officials in a trap case. No witnesses were examined.

15. We have also looked at the enquiry report which merely records that the allegation registered under clause 1 & 2 *prima facie* appears to be in violation of Rule 9(1)(c) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The employee's contention that the allegation is in the nature of a conspiracy was disbelieved for no evidence having been led to prove the conspiracy. The Vigilance Court was found to have the right to hear and decide the allegations registered under Case No. 72 of 2001. The Enquiry Report further states that it is from the above recorded facts and observations in the show cause notice *filed by (sic)* the accused employee that an FIR was registered, and the charges framed in Form-A was held to be proved. The findings are perfunctory, presumptive and unsupported by any valid evidence. Mere registration of an FIR would not bring in the preponderance of probability to prove the charge against the accused, even in a disciplinary enquiry, is our definite



opinion.

16. We also notice the decision of the Hon'ble Supreme Court in the case of *Roop Sing Negi Vs. Punjan National Bank* reported in (2009) 2 SCC 570, which categorically held that mere production of documents is not proof even in a departmental enquiry and the contents of documentary evidence will have to be proved by examining witnesses. It was categorically held that an FIR in itself is not evidence without actual proof of facts stated therein. The Department could have examined the witnesses, as we noticed; the Complainant, members of the trap team or even the independent witnesses to the trap, to prove the facts as stated in the FIR.

17. We find absolutely no reason to sustain the enquiry, the punishment imposed on the basis of such enquiry; in which there was absolutely no material produced as valid evidence. The order of dismissal and the order rejecting the appeal also hence, has to be set-aside. We find the judgment of the learned Single Judge also to be flawed for having not correctly appreciated the law, on the facts coming out in the above case. We set aside the judgment of the learned Single



Judge and also find the enquiry to be not in accordance with law.

18. The appellant has superannuated on 13.09.2023. The appellant would be deemed to have continued in service from the date of his suspension and he would be paid the entire pay and allowances, barring the period he spent in judicial custody on the registration of the FIR. The appellant would be paid the entire salary and allowances due to him during the period of his suspension and also after he was dismissed, till the date of superannuation; following the decision in the case of ***Depali Gundu Surwase*** and ***Pawan Kumar Agarwala*** (both *supra*). The appellant shall also be entitled to the retirement benefits including pension from the date of his superannuation, subject to the Bihar Pension Rules regarding payment of pension with respect to pensioners against whom criminal proceedings are pending. While computing the arrears of pay and allowances due to the appellant during the period of suspension; subsistence allowance paid to him shall be deducted. The appellant shall be paid the entire dues of pay and allowances within a period of three months. The appellant's pension, to the extent permissible, shall commence from the month of



August 2024 and the arrears of pension, also to the extent permissible, shall be paid within three months from the date of uploading of this judgment. If there is delay caused in paying the arrears of pay and allowances as also arrears of pension and regular pension, to the extent permissible, commencing from 31.08.2024, the appellant shall be paid interest @ 5 per cent per annum and the said interest liability burdened on the State can be recovered from the officer/officers who occasioned the delay in complying with the directions of this Court.

19. The LPA stands allowed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

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