

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.462 of 2024
In
Civil Writ Jurisdiction Case No.3662 of 2020

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Ravindra Nath Chourasia S/o Late Manohar Prasad Chourasia, Resident of C-302, 3rd floor, Angvihar Apartment Rani Talab, Fatehpur, P.S.- Sabour, District- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through officer on Special Duty, P.H.E.D, Government of Bihar.
2. The Officer on Special Duty, P.H.E.D, Government of Bihar.
3. The Chief Secretary, P.H.E.D, Government of Bihar.
4. The Chief Engineer cum Special Secretary, P.H.E.D, Government of Bihar.
5. The Chief Engineer, P.H.E.D, Government of Bihar.
6. The Superintending Engineer, P.H.E.D., Saharsa.
7. The Executive Engineer, P.H.E.D., Madhepura.
8. The Assistant Engineer, P.H.E.D., Madhepura.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abhash, Advocate Mr. Pradhan Murli Manohar Prasad, Advocate Mr. Raju Kumar, Advocate
For the Respondent/s	:	Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2024

The appeal is against the judgment of the learned Single Judge approving the order dated 26.10.2015 (Annexure-8 of the writ petition) which withheld 50% of the pension of the appellant and also the salary for the suspension period, which was passed by Annexure-9 (of the writ petition) dated 01.02.2016.



2. The appellant was proceeded with through Annexure-1 (of the writ petition) charge-sheet on various allegations. The allegations were of the appellant being a member of patrolling party in the conduct of elections; having changed the route while bringing back sixteen ballot boxes to the strong room, causing damage due to murky water having entered the ballot boxes; which destruction of ballot papers was also not disclosed to the higher authorities. The above action resulted in a re-polling.

3. It was also alleged that the appellant was in-charge of various schemes of the sub-divisions at Madhepura, Murliganj and Udaikishunganj, wherein there was no updating of status report which created difficulty in reconciling the accounts.

4. The enquiry report found that there were 131 toilets reported as completed by the appellant as reported by the Executive Engineer-cum-Member Secretary, District Water and Sanitation Committee, Madhepura which would reduce the amount of advance given in the name of the appellant. The further findings are with respect to lakhs of rupees having been paid to the appellant by the then Executive Engineer without following the rules regulating such advances and no



reconciliation of accounts having been made.

5. The finding is anomalous insofar as no specific amount having been spoken of and total absence of evidence regarding the advances granted to the appellant; produced before the Enquiry Officer.

6. Again, it was reported that there is a pending total of Rs. 98,440/- received from the UNICEF, the notification letter of which amount is stated to be not available in the divisional office. It was also stated that the Executive Engineer, Public Health Division, Madhepura has in a communication stated that the advance cheque of Rs. 37,440/- was not encashed in time and the cheque was not made available to the office. The Enquiry Officer found dereliction of duty and negligence and assessed a net amount Rs. 61,000/- (98,440-37,440) as due from the appellant.

7. We are unable to uphold the findings in the report, especially since the Enquiry Officer itself found that there is no document indicating the amount of Rs. 98,440/- as having been received from the appellant. As far as Rs. 37,440 is concerned, a communication from the Executive Engineer was referred to, without the Executive Engineer being examined.



8. There are also statements made of the appellant while in-charge of Sub-Divisional Store, Udakishunganj having not submitted the site accounts on which allegation it is stated that there is a possibility of wastage of government materials. Again, there is no person examined in the Enquiry to substantiate the said allegation.

9. Admittedly, none was examined at the enquiry nor were any documents marked. Merely based on the allegations, Enquiry Officer found the misconducts alleged to be proved.

10. The Superintendent Engineer's order based on the enquiry finding also does not refer to any evidence having been adduced.

11. The learned Counsel for the appellant relied on **State of Bihar and Ors. v. Vikash Kumar; 2024 SCC OnLine Pat 5879**. The learned Government Advocate on the other hand submitted that there was clear defalcation of amounts and huge loss was caused to the Government. It is prayed that the Government may be given another opportunity to adduce evidence properly.

12. **Roop Singh Negi v. Punjab National bank; (2009) 2 SCC 570** categorically held that mere production of



documents without examination of witnesses would not be valid evidence.

13. In the present case, we also do not see any documents marked in the enquiry and no witnesses were examined. If a communication and its contents were to be relied upon in the enquiry, necessarily, the author of the document should be examined and the delinquent employee given a chance to cross-examine him.

14. The learned Government Advocate submitted that there was never a request for cross-examination.

15. We cannot but notice the trite principle that burden of proof never shifts and only the onus shifts from the person who has the burden, on his discharging such burden. In a disciplinary enquiry where allegations of misconducts are raised it is for the department to establish the misconducts in the enquiry, by examining witnesses and producing documents, substantiating the allegations raised. Only when such burden is discharged, the onus shifts to the delinquent employee to disprove the case of the department or to substantiate the explanation for his actions. In the present case, there is absolutely no evidence led and the allegations were not at all proved. Such a proceeding cannot lead to finding of guilt of the



delinquent employee of the misconducts alleged.

16. As far as the remand prayer of the respondents, we have considered the issue in **Vikash Kumar** (supra). We extract paragraph no. 8 to 10:

*8. The decisions in **Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588** and **ECIL v. B. Karunakar, (1993) 4 SCC 727**; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to the delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to*



make a representation to the Disciplinary Authority against the findings in the report.

9. The non-furnishing of the report, hence amounts to violation of principles of natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being penalized and not to clear up the lacuna committed by the Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

10. ECIL (supra) by a larger Bench, on a reference made, reaffirmed the dictum in Mohd. Ramzan Khan (supra). These were cases in which the Hon'ble Supreme Court found that a reasonable opportunity, to defend the allegation of misconduct levelled and represent against the findings of the enquiry report, was not afforded to the delinquent employee; in which case alone there could be a remand made for the purpose of curing the defect and affording a reasonable opportunity to the delinquent employee.

17. **Vikash Kumar** (supra) had also relied on **Union of India v. P. Gunasekaran; (2015) 2 SCC 610** to find



that the High Court under Article 226/227 of the Constitution of India is entitled to interfere when the finding of fact is based on no evidence. It was held that if in every case in where no valid evidence is led at the enquiry proceedings; if there is a remand made, it would be offering a premium to the negligence of the management/disciplinary authority and condoning the levity with which the departmental enquiry was conducted.

18. We extract paragraph no. 12 and 13 of the aforesaid judgment:

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.***

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.

(underlining & bold font supplied, for emphasis)

19. The appeal stands allowed setting aside the order of withholding of pension and withholding of his entire salary during the suspension period. The appellant shall be paid the entire salary and dues during the suspension period minus the subsistence allowance paid.

20. The appellant would also be entitled to the retirement benefits which shall also be paid.

21. The directions hereinabove shall be complied with and the payments of arrears of salary & allowances, retirement benefits and pension shall be made within a period of six months from the date of uploading of this judgment; failing which, the appellant would be entitled to 5% p.a. simple interest on the said amounts from the date of expiry of the period of six months, till the payment is made. While making



the payment of arrears, the appellant shall be issued with written computation of amounts due to him from the date of his suspension. If the amounts are not paid within the time provided by us, the interest shall first be paid by the State Government and then the State Government would be entitled to proceed against any officer who committed default in complying with our directions, for recovery.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.09.2024.
Transmission Date	

