

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.770 of 2024
In
Civil Writ Jurisdiction Case No.8633 of 2021

1. The State of Bihar through Secretary Department of Planning and Development, Government of Bihar, Patna.
2. The Director, Directorate of Economics and Statistics, Department of Planning and Development, Bihar, Patna.
3. The Additional Collector-Cum-Conducting Officer, Sitamarhi.
4. The District Statistical Officer-cum-Presenting Officer, Sitamarhi.

... .. Appellants

Versus

Anil Kumar Sinha, Son of late Krishna Bihari Sinha, Resident of Mohalla Professor Colony, K.G. Road, P.S. Nawada Town Ara, District- Bhojpur, Presently Resident at New Patna Colony, Road No. 1, P.S. Beur, Town and District- Patna- 800002

... .. Respondent

Appearance :

For the Appellants : Mr. Anjani Kumar, AAG-4
Mr. Deepak Sahay Jamuar, AC to AAG-4

For the Respondent : Mr. Akhilesh Dutta Verma, Advocate

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

Date : 20-11-2024



Heard Shri Anjani Kumar, learned Additional Advocate General-4 assisted by Shri Deepak Sahay Jamaur, learned AC to AAG-4 for the appellants- State of Bihar and Shri Akhilesh Dutta Verma, learned counsel for the writ petitioner- respondent.

Re: I.A. no. 1 of 2024.

2. The instant interlocutory application has been filed by the appellants praying for condoning the delay of ten days in filing of the instant appeal.

3. The application is opposed by learned counsel appearing for the respondent.

4. Having heard learned counsel for the parties and having perused the contents of the application, the Court is satisfied that the appellants have made out a case for condonation of delay. The delay is condoned and the appeal is treated to be within time.

5. I.A. no. 1 of 2024 stands allowed.

Re: LPA no. 770 of 2024.

6. The instant appeal has been preferred by the State of Bihar against the judgment dated 21.6.2024 whereby the learned Single Judge was pleased to set aside and quash the order of termination dated 21.9.2017 passed by the



Disciplinary Authority as also the order dated 9.3.2021 passed by the Appellate Authority with a further direction that the writ petitioner be reinstated with all back financial benefits and consequential reliefs.

7. The writ petitioner-respondent was initially appointed as a Block Statistical Supervisor under Block Chainpur in the District of Rohtas and presently in the District of Kaimur. On a complaint made by one Rambhu Jha on 14.11.2014 to the effect that a demand of Rs.5000/- as bribe money was being made by the writ petitioner for getting a piece of land mutated in the name of the complainant, a raid was conducted and the writ petitioner trapped along with one another who was caught with Rs.4000/-. The writ petitioner was taken into custody, a case instituted being Vigilance Case no. 93 of 2014 and on investigation, chargesheet submitted under various sections of the Prevention of Corruption Act.

8. The writ petitioner was also proceeded against departmentally under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 ('CCA Rules' in short) wherein on being served with a show cause notice, the writ petitioner submitted his reply. On perusal of the writ petitioner's reply, the District Statistical Officer-cum-



Presenting Officer, Sitamarhi submitted his report dated 26.2.2016 concluding that no charge is proved against the writ petitioner. The Enquiry Officer, not taking into account the report submitted by the Presenting Officer, submitted his enquiry report dated 4.5.2016 finding the two charges to be proved against him. A second show cause notice dated 10.6.2016 was served on the writ petitioner to which he replied refuting the charges. The final order dated 21.9.2017 was passed in the departmental proceeding inflicting the punishment of dismissal from service. An appeal was preferred by the writ petitioner, which was rejected by the Appellate Authority vide order dated 9.3.2021.

9. The writ petitioner preferred CWJC no. 8633 of 2021, which was allowed by the learned Single Judge who was pleased to quash the order of punishment dated 21.9.2017 of the Disciplinary Authority as also order dated 9.3.2021 of the Appellate Authority affirming the order of punishment. Direction was given for the writ petitioner to be reinstated back with all financial benefits. It is against this order that the instant appeal has been preferred by the State of Bihar and its authorities.

10. It was submitted by learned Additional Advocate



General appearing for the appellants that the writ petitioner was caught red handed while accepting the bribe by the Vigilance Investigation Bureau. Chargesheet has been submitted in the criminal case and sanction for prosecution has also been granted. It was further submitted that the learned Single Judge having come to the conclusion that there was technical defect in conduct of the departmental proceeding, he ought to have remitted the matter back for afresh departmental proceeding from the stage of the defect and not ordered for reinstatement of the writ petitioner in service with all back benefits. It was submitted that the matter atleast be remanded back for proceeding with a departmental proceeding against the writ petitioner from the stage, the same has been found to be defective.

11. The appeal was opposed by learned counsel appearing for the writ petitioner-respondent. It was submitted that there being no error in the order of the learned Single Judge, there is no merit in the instant appeal and thus the same be dismissed.

12. Having heard learned counsel for the parties and having perused the material on record, this Court finds that on a complaint having been received from one Rambhu Jha with



respect to the writ petitioner having made a demand of bribe to the tune of Rs.5000/- of which a part had been given earlier, a raid was conducted and the writ petitioner along with *Nazir* Hulash Prasad were caught along with Rs.4000/-. A post trap memorandum was prepared and the writ petitioner was taken into custody. An FIR under the Prevention of Corruption Act was registered and on completion of investigation, chargesheet submitted on 5.2.2015.

13. The writ petitioner was served with a departmental chargesheet on 19.2.2015 to which he filed his show cause on 3.9.2015 refuting the charges levelled therein. It was stated by the writ petitioner that Mutation Case nos. 1214/2014-15 and 1215/2014-15 had been rejected. The complainant had not preferred any appeal against both the orders and instead applied for mutation once again vide Mutation Case nos. 2230/2014-15 and 2231/2014-15. These two cases were also rejected vide orders dated 10.9.2014 and 4.10.2014. It was thus the case of the writ petitioner that the mutation case of the complainant having already been rejected, there was no occasion for him to demand or accept any bribe in November, 2014.

14. Having perused the reply filed by the writ



petitioner, the District Statistical Officer-cum-Presenting Officer, Sitamarhi submitted his report dated 26.2.2016 to the Departmental Enquiry Officer concluding that no charge has been proved against the writ petitioner. The Enquiry Officer submitted his enquiry report dated 4.5.2016.

15. The charges against the writ petitioner and the departmental proceeding were firstly that inspite of Rambhu Jha having made a number of oral requests for mutation of his name with respect to the land in question, the writ petitioner had made a demand of bribe to the tune of Rs.5000/- for which a trap had been set up and the writ petitioner along with the *Nazir* had been arrested on 27.11.2014. The second charge was that having been taken into custody in connection with the FIR being Vigilance P.S Case no. 93 of 2014 dated 27.11.2014, the writ petitioner had been placed under suspension under the CCA Rules.

16. The Enquiry Officer in his report dated 4.5.2016 found that the charge no.1 had not been proved, however the charge no.2 had been proved.

17. It would be relevant to take note of the fact that in the departmental proceeding neither the complainant Rambhu Jha nor any of the police personnel who were part of



the team which conducted the trap of the writ petitioner and his accomplice were examined. In fact, perusal of Form-*ka* ie the chargesheet supplied to the writ petitioner in the departmental proceeding would show that for purpose of proving the charges, by way of evidence, it only refers to the letter no. 2906 dated 10.11.2014 of the Vigilance Investigation Bureau.

18. It may be stated here that neither any witness finds mention in the chargesheet nor was any witness examined in course of enquiry to prove the charges levelled against the writ petitioner. The Enquiry Officer relied solely on the letter no. 2906 dated 10.12.2014 (wrongly mentioned as 10.11.2014) of the Vigilance Investigation Bureau.

19. The Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank & Ors; (2009) 2 SCC 570** held that evidence collected by the Investigating Officer cannot be treated to be evidence in departmental proceeding and will have to be proved by examination of witness. Mere tendering of evidence would not prove the contents thereof. Relevant paragraph of the judgment is reproduced herein below for ready reference :-

“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.”

20. So far as the submission of the learned Additional Advocate General that the case should atleast have been remanded back for proceeding afresh from the stage, the departmental proceeding was considered defective, is concerned, it would be relevant to refer to the Division Bench judgment dated 21.8.2024 of this Court in **LPA no. 446 of 2024 (The State of Bihar & Ors. vs Vikas Kumar)** wherein this Court held as follows :-

“6. Faced with the above prospect, the learned Advocate General urged that this was a fit



case where the learned Single Judge ought to have remanded the matter to the Enquiry Officer.

7. We beg to differ, since the ground on which the dismissal order was interfered with, was not a technical defect in the conduct of the enquiry. It is only when the termination of an employee is faulted on a technical ground, there is need for a remand on the ground inter alia of violation of principles of natural justice; so as to resume the enquiry from the stage at which the technical defect is noticed. Where, in an enquiry carried out, there was no proper evidence led, the management cannot be allowed to correct its mistake by making a remand and permitting fresh evidence to be led to find the delinquent employee guilty of the misconduct.

*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.”

21. Further relying on the judgment of the Hon’ble Supreme Court in the case of **Union of India & Ors vs. P. Gunasekaran; (2015) 2 SCC 610**, this Court in the case of **Vikash Kumar** (*supra*) further proceeded to hold as follows :-

“12. From the above extract it is very clear that the High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no evidence. If in every case where no valid evidence is led at the enquiry proceedings, 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. It is the Disciplinary Authority who appoints the Enquiry Officer and also the Presenting Officer. We would think that the Presenting Officer would be well versed in the procedures and also be informed of the manner in which evidence has to be led before the Enquiry Officer to prove the misconduct alleged against the delinquent employee.

13. In disciplinary enquiry proceedings, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt; as would be required in a criminal prosecution. However, if there is no evidence led at the enquiry,



there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalized on the basis of peremptory findings without any valid evidence.”

22. Coming to the facts of the instant case, this Court finds that no document having been brought on evidence except for the letter dated 10.12.2014 of the Vigilance Investigation Bureau and more so, not a single witness having been examined to prove the charges against the writ petitioner, it is a case of no evidence having been led against the writ petitioner in the departmental proceeding. The case not being one of technical defect caused to the delinquent as may occur on account of non-supply of enquiry report, order remanding the matter, in terms of the judgment in the case of **Vikash Kumar** (*supra*) would amount to ‘*offering a premium to the negligence of the Management/ Disciplinary Authority and condoning the levity with which the departmental enquiry was conducted*’.

23. Thus, in view of the facts and circumstances of the case, the Court finds the order of punishment and the appellate order to be unsustainable and the learned Single Judge has rightly quashed both the orders and allowed the writ



application with all consequential financial benefits.

24. The Court finds no merit in the instant appeal and the same is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ; I agree.

(K. Vinod Chandran, CJ)

Shiv/-

AFR/NAFR	
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