

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1302 of 2023

In
Civil Writ Jurisdiction Case No.7586 of 2013

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1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
 3. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
 4. The Commissioner, Purnea Division, Purnea.

... .. Appellant/s

Versus

Ashok Kumar Tiwari Son of Late Shri Ram Pratap Tiwari, resident of Bank of India Colony, A-18, Near Ram Nagri More, P.S. Shastri Nagar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raghwanand, GA-11
		Mr. Sanjay Kr. Tiwari (A.C. To G.A.11)
		Mr. Pratik Kumar (A.C. To G.A.11)
For the Respondent/s	:	Mr. Prince Kumar Mishra, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 21-01-2025

Heard learned counsel for the appellants and learned counsel for the respondent.

2. The appellants (writ respondents) have preferred this appeal against the judgment dated 5.9.2023 whereby the learned Single Judge was pleased to allow CWJC no.7586 of 2013 filed by the respondent (writ petitioner), quash the order of punishment as also the inquiry report and hold the respondent



entitled to full back wages along with admissible consequential benefits.

3. The relevant facts in brief are that the respondent was placed under suspension and proceeded against departmentally on 19.3.2009 with respect to two charges which pertained to the period from 9.5.2005 to 14.10.2005 when he was posted as the Block Development Officer, Block Palasi, District Araria. The first charge related to opening of Bank account in Dehti PACS, in contravention of the guidelines issued by the State Government and deposit of Rs. 172.2 lacs. The other charge related to misuse of the said amount. The respondent filed his reply to the charges. An inquiry report dated 12.11.2009 was submitted finding the charge relating to opening of Bank account to be proved, however, the second charge relating to misuse of the amount was not proved.

4. It further transpires that the appellants issued an amended memo of charge on 12.7.2010 and a *de novo* inquiry was initiated. The amended memo of charge also contained two charges which were with respect to the respondent having deposited a sum of Rs. 1.72 crores with Dehti PACS in account no. 14 of 2004 and a second charge being of the respondent of having misused the said amount for personal gain. In the inquiry



report submitted on 30.3.2011, both the charges were found to be proved. A second show-cause notice was issued to the respondent to which he replied. Thereafter, the order of punishment dated 24.2.2012 dismissing the respondent from service was passed which was challenged by the respondent by filing CWJC no. 7586 of 2013. The writ application having been allowed by judgment dated 5.9.2023, as stated above, the instant appeal has been preferred against the same.

5. Learned counsel for the appellants has submitted that the learned Single Judge failed to appreciate and consider that the respondent had violated the clear instructions and guidelines mentioned in the *Sunishit Gramin Rojgar Yojna* (SGRY) and had wilfully and deliberately opened an account in Dehti PACS instead of a nationalised bank. Having deposited a sum of Rs. 172.2 lacs in between 16.5.2005 and 30.8.2005, the respondent had misused the money and the said charge had also been proved in the departmental proceeding. It was further submitted that the charges are serious and the learned Single Judge in interfering with the order of punishment had erred. It was thus prayed that the order of the learned Single Judge be set aside and the appeal be allowed.

6. In response, it was submitted by learned counsel



appearing for the respondent that the appellants could not have proceeded with a *de novo* inquiry after submission of the inquiry report dated 12.11.2009. In support of his contention, learned counsel relies on the judgment dated 19.1.2023 passed by this Court in **LPA no. 1653 of 2016 (The State of Bihar & Ors. vs. Md. Shamim Akhtar & Anr.)** as also on the judgment of the Hon'ble Supreme Court in the case of **Kanailal Bera vs. Union of India & Ors. [(2007) 11 SCC 517]**. It was submitted that in view of the ratio of the judgments as mentioned herein above, the learned Single Judge rightly set aside the order of punishment and allowed the writ application filed by the respondent. There being no merit in the instant appeal, the same be dismissed.

7. Having heard learned counsel for the parties and taking into consideration the facts of the case, it transpires that the respondent having been proceeded against in a departmental inquiry on two charges which related to for the period from 9.5.2005 to 14.10.2005 when the respondent was posted as the Block Development Officer, Palasi Block, Araria, in the inquiry report dated 12.11.2009 submitted, while the first charge relating to opening of Bank account in Dehti PACS was found to be proved, the charge relating to misuse of money was not



proved. The Principal Secretary of the Department proposed for inflicting minor punishment on the respondent, however, the appellants herein proceeded to amend the memo of charge on 12.7.2010 and a *de novo* inquiry was initiated. In the fresh inquiry, both the charges relating to the respondent having deposited a sum of Rs. 1.72 crores with Dehti PACS and of having misused the said amount for personal gains were found to be proved and after issuance of a second show-cause notice and receiving the reply of the respondent, the order of punishment of dismissal from service was passed against the respondent.

8. On perusal of the order under challenge, this Court finds that the learned Single Judge has relied on the judgment in the case of **Md. Shamim Akhtar** (*supra*) and **Kanailal Bera** (*supra*) in allowing the writ application. It has also been taken into account that in the first inquiry report neither any oral evidence was led nor any documents exhibited.

9. In the case of **Md. Shamim Akhtar** (*supra*) the Division Bench of this Court has held as follows:-

“02. Perusal of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it is evident that disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer's report/finding.



The disciplinary authority had option of either accepting or rejecting the finding of the Inquiring Officer's report or in the event of disagreeing with the inquiring officer report or finding. In that event disciplinary authority has option of issuing of show cause notice to the concerned person to the extent of disagreeing with the inquiring officer's report or finding and he had option of remanding the matter to the inquiring authority to commence the inquiry from the defective stage and complete the process of inquiry or he/she can complete the inquiry. On the other hand, in the present case disciplinary authority proceeded to amend the charge and ordering fresh inquiry. Such procedure is not in consonance to the law for the reason that Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 do not provide for such procedure. In fact, the petitioner in para 25 and 56 of the writ petition has specifically contended that ordering fresh inquiry is bad in law.

03. In the light of these legal issues, the appellants-State have not made out a case so as to interfere with the order of learned Single Judge dated 15.03.2016 passed in CWJC No. 7623 of 2013. Accordingly, the present Letters Patent Appeal stands dismissed.”

10. In **Kanailal Bera** (*supra*), the Hon'ble Supreme Court held as follows:-

“6.....Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby finding is required to



be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry.”

11. As seen above, this Court in the case of **Md. Shamim Akhtar** (*supra*) held that the disciplinary authority has no power to amend the charge at the stage of consideration of inquiring officer's report/finding. The only option that the disciplinary authority has is to either accept or reject the finding of the inquiring officer's report or in case he disagrees with the inquiring officer's report, to issue a show-cause notice to the concerned person to the extent of the disagreement. The only option he has is to remand the matter to the inquiring authority to commence the inquiry from the defective stage. Further, the Hon'ble Supreme Court in the case of **Kanailal Bera** (*supra*) held that once a disciplinary proceeding has been initiated, the same has to be taken to its logical end.

12. In addition to the above, it is also not in dispute that neither any oral evidence was led nor any documents exhibited as would be evident from the first inquiry report. The



same is clearly in teeth of the judgment of the Hon’ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors. [(2009) 2 SCC 570]**.

13. Taking into consideration the facts of the case, the learned Single Judge was pleased to allow the writ application setting aside the order of punishment of dismissal with full back wages along with all consequential benefits. The appellants have not made out a case for interference in the order of the learned Single Judge. The Court finds no merit in the instant appeal.

14. The appeal is dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

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