IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1302 of 2017
In
Civil Writ Jurisdiction Case No.934 of 2016

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Devendra Prasad, S/o Late Krishna Prasad R/o 120B, Shyam Sunder Complex, Jagdeo Path More, Bailey Road, P.S. Shastri Nagar, District Patna.

... ... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Joint Secretary, Department of Home, Government of Bihar, Patna.
4. The Additional Secretary-cum-Director, Administration, Home Department, Bihar, Patna.
5. The Inspector General, Prison and Reforms Services, Inspectorate, Bihar, Patna.
6. The Joint Commissioner, Departmental Enquiry-cum-Conducting Officer, Koshi Division, Saharsa.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Jagnnath Singh, Advocate
Mr. Md. Ghulam Mustafa, Advocate
For the Respondent/s : Mr. P.K. Verma- AAG-3
Mr. Suman Kumar Jha, A.C. to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-10-2023

The appellant was a Senior Jail Superintendent who was dismissed from service after a disciplinary proceeding was conducted and concluded, finding him guilty. In the writ petition the learned Single Judge refused to express any opinion for the present, especially since the writ petitioner was found to have not responded to the charges relating to financial irregularities

simply on the plea of non-supply of documents. It was found that the Vigilance Report together with its enclosures, forming the basis of the disciplinary proceeding, was supplied to the delinquent. It was held that the disciplinary proceeding is to be tested on the touchstone of preponderance of probability and since the criminal case against the officer is still pending, for the present, no indulgence is called for. It was observed that the petitioner would have the liberty to take recourse to such remedy if and when the criminal case ultimately is settled in his favour.

2. At the outset, it has to be stated that we are unable to agree with the said findings, especially since the learned Single Judge has not gone into the aspect of whether there was any evidence on which the delinquent employee could be found guilty, even on preponderance of probability, in the inquiry proceeding. Merely because the delinquent employee failed to respond to the charges relating to financial irregularities, the Department is not absolved of the responsibility to lead evidence at the inquiry and enable the Inquiry Officer to enter a finding of guilt on the evidence led at the inquiry. It goes without saying that the inquiry though has to be held in strict compliance of the principles of natural justice; affording every

opportunity to the delinquent employee to controvert his charges, if the delinquent employee does not cooperate, findings can be entered into on the evidence led.

3. The findings in such an inquiry would be seldom interfered with by Courts, especially when sitting in judicial review, which jurisdiction we are exercising under Article 226 of the Constitution of India, when there is some evidence on which the finding is entered into. However, if the Inquiry Officer and the Disciplinary Authority has relied on extraneous matters and if there is no evidence to find the complicity of the delinquent employee, then there definitely could be interference caused by this Court, under judicial review.

4. A procedural irregularity, even in compliance of principles of natural justice, would again clothe this Court with the power to interfere, but ensuring that the inquiry is resumed from the stage at which such irregularity is found. The compliance of the principles of natural justice would mean an effective and adequate opportunity to the delinquent employee at every stage to defend the charges levelled against him and controvert the allegations on facts alleged against him, which forms the basis of the charges levelled.

5. It is in this perspective; the Court has to examine a

challenge from an order of the Disciplinary Authority which is also based on the preponderance of probabilities and not a finding of guilt beyond all reasonable doubt; as is applicable in criminal cases. A criminal case and a disciplinary proceeding initiated on the same transaction could proceed simultaneously as held by the Hon'ble Supreme Court, unless the facts are so inextricably linked that the Disciplinary Authority should await the result of the criminal proceeding.

6. In the present case, the Disciplinary Authority proceeded with the matter and imposed the penalty of dismissal even before the criminal case was settled. We cannot accept the finding of the learned Single Judge that merely because the disciplinary proceeding was initiated on the basis of the Vigilance Report and the enclosures therein, it can be held that there is preponderance of probability in so far as the finding of guilt entered against the delinquent employee.

7. As has been held in ***Roop Singh Negi v. Punjab National Bank and others; (2009) 2 SCC 570***, the documents produced in a departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon'ble Supreme Court had also held that even an admission or

confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a *quasi-judicial* proceeding and the Inquiry Officer functions in the status of a *quasi-judicial* authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No Inquiry Report based on conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof.

8. In ***Punjab National Bank and others v. Kunj Behari Misra; (1998) 7 SCC 84***, the Hon'ble Apex Court held that a disciplinary inquiry can be declared as vitiated on account of non-observance of principles of natural justice. In that case, though such a declaration was made, there was no resumption of the inquiry proceedings from the stage at which such irregularity had occurred since the delinquent employee had retired 14 years back.

9. We have heard Shri Jagnnath Singh, learned counsel for the appellant and Shri P.K. Verma, learned Additional Advocate General No. 3 for the State.

10. It was argued on behalf of the appellant that the very institution of proceedings as per Rule 16 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity "the CCA Rules") has to be by the Government or the Appointing Authority. The appellant who was a Senior Jail Superintendent, was appointed by the Government but, Annexure-1 Charge Memo was issued by the Joint Secretary-cum-Director who cannot be said to be the Government. There is also no general or special order of the government empowering institution of proceedings by the said officer.

11. It is further argued that though the learned Single Judge found the inquiry to be based on the Vigilance Inquiry Report, even the report was not supplied to the appellant. It is further stated that neither were the documents supplied nor even a list of such documents or the list of witnesses were provided, as is mandated under Rule 17 (4) of 'the CCA Rules'. The Inquiry proceedings were in total violation of the principles of natural justice and the appellant was never afforded an

opportunity to controvert the allegation on facts and the charges levelled. It is pointed out that for strict action implemented by the appellant, against his subordinate officers, an inimical retaliation was made by constituting a vigilance team and setting up the appellant, which eventually ended in his dismissal.

12. The learned Additional Advocate General appearing on behalf of the State argued for sustaining the order of the Disciplinary Authority. According to him, very serious allegations were made against the appellant and further the appellant was provided the Vigilance Report and the Inquiry Report. There was sufficient evidence led in the inquiry and in any event, strict rules of evidence as available in the Evidence Act is not applicable to departmental proceedings. It has to be found on preponderance of probability, especially based on the Vigilance Report, that the appellant was guilty of the misconduct alleged.

13. It has been further argued by the learned A.A.G. that the Chief Minister who was the Minister-in-charge of the Home Department had approved the institution of the inquiry as available from the files and permissible under the Rules of Executive Business, 1979, as produced at Annexure-G in the

writ petition.

14. Rule 16 of ‘the CCA Rules’ provides for the Government or the appointing authority to institute disciplinary proceedings against any government servant. Any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government could also institute such disciplinary proceedings.

15. Sub-rule (2) of Rule 16 enables a Disciplinary Authority competent under ‘the CCA Rules’ to impose any of the minor penalties under Rule 14, to institute a disciplinary proceeding against any government servant for the imposition of any of the major penalties under Rule 14; notwithstanding that such Disciplinary Authority is not competent under the Rules to impose any of the major penalties. Further, Rule 22(2) of the Rules of Executive Business provides for submission to the Minister-in-charge of the department disciplinary cases concerning Class-II State Service Officers with respect to the proposals to suspend officers of State Services or impose minor penalties on such officers.

16. Learned A.A.G. submits that the Chief Minister at that point of time being the Minister-in-charge, could initiate proceedings for and impose minor penalties. Such authority

having approved the proposal to initiate the proceedings as per the Rules of Executive Business, the proceedings as initiated herein is in compliance of the Rules of Executive Business.

17. We also have to notice the Charge Memo issued, produced along with Annexure-1, which indicates the enclosure of the Vigilance Report. Learned counsel for the appellant specifically referred to Annexure-4 in the writ petition, the reply given to the Charge Memo to contend that the Vigilance Report was not supplied to the appellant which contention he had taken at the first instance itself.

18. We specifically refer to Paragraphs 2 and 3 of Annexure-4 which are extracted hereunder:-

> *"2. कि गठित आरोप के विरूद्ध साक्ष्य कॉलम में उन्होंने अनुलग्नक के रूप में जो साक्ष्य लिखा था वह है– आरक्षी अधीक्षक निगरानी विभाग (अन्वेषण ब्यूरो) के पत्रांक 309 दिनांक 28.02.12।*
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> *3. कि प्रपत्र के साथ साक्ष्य से संबंधित कोई भी दस्तावेज 16.08.13 तक उपलब्ध नहीं कराया गया जिस संबंध में माननीय महोदय के पास पत्रांक 775 दिनांक 16.08.13 द्वारा सूचना भी दिया हूॅ।"*

Looking at the aforesaid extract, we cannot find that the Vigilance Inquiry Report was not supplied to the appellant. What comes out from the above extract is that though the Vigilance Report is mentioned in the evidence column, there is no document relating to evidence, made available. It has to be accepted that there are no documents supplied which are said to

be enclosed with the Vigilance Report. The first of the extracts above indicates that in the evidence column, the enclosure is shown as Letter No. 309 dated 28.02.2012 of Superintendent of Police Vigilance Department (Investigation Bureau). The second of the above extract indicates that no document relating to the evidence was made available with the form dated 16.08.2013. Hence, none of the enclosures in the Vigilance Report was supplied to the appellant.

19. In this context, we have to specifically notice Rule 17(4) of 'the CCA Rules', which reads as under:-

> *"17(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person."*

20. In the present case, but for the supply of the Vigilance Report, there is no list of witnesses or documents supplied to the delinquent employee. A translated copy of the Inquiry Report was placed before us, which is available in the records. The Inquiry Report indicates that the delinquent officer was made available the evidence by the Presenting Officer, *'by*

his letter no. 369 dated 28.02.2013, of the enquiry report of Project and Vigilance Department' (*sic*). This does not in any manner indicate that the enclosures in the Vigilance Report were supplied to the appellant. It is also seen from the Inquiry Report that the delinquent officer was repeatedly asking for evidence, which was observed to have been made available by the Presenting Officer. The evidence made available was only the Vigilance Report, even as per the Inquiry Report. But for the Vigilance Report, there is no evidence seen to have been supplied to the delinquent employee.

21. In the Inquiry Report, the charges, the findings in the Vigilance Report as also the opinion of the Presenting Officer were noticed, but there is no reference to the examination of any witness before the Inquiry Officer or the proof of any document produced having been adduced. There are certain bills referred to in the Inquiry Report which were not produced before the Inquiry Officer. There were also references made to the various pages in a Store Book which is not seen to have been produced before the Inquiry Officer. An Inspection Report of physical verification is also referred to, without examining the person who prepared such report on physical inspection.

22. It has been consistently recorded that the show cause of the delinquent employee was not received with respect to the charges; which obviously, as argued by the learned counsel for the appellant, is due to the evidence to be led in the inquiry not having been communicated to the delinquent employee nor the same produced before the Inquiry Officer. The Inquiry Officer has also referred to the statements of many persons, attached in the statement record of the Vigilance Report; which record was neither supplied to the delinquent employee nor any of them examined as witnesses. Further, not even the officer who prepared the Vigilance Inquiry Report nor any one to establish the contents of the so-called enclosures of the Vigilance Report, was examined at the enquiry.

23. As has been held in ***Roop Singh Negi*** (supra), mere production of a document is not enough and the contents of the document has to be proved by the examining witnesses.

24. The only witness seen to have been examined is one barber, Devanand Thakur who is said to have appeared on 20.03.2014. He spoke of asbestos-sheets kept inside the jail compound having been taken outside the jail gate which was later taken to the house of the appellant. There is nothing indicating the fact that the asbestos sheets were purchased with

government funds and there is no specific charge on this count, of purchase of asbestos and appropriation of the same for personal use.

25. The dismissal order is dated 13.10.2015 and is produced as Annexure-14 in the writ petition which also does not discuss any evidence led at the inquiry.

26. We find the enquiry to be flawed beyond repair and no finding of guilt could have been held on the basis of the Vigilance Report alone. If the department or the Government was of the opinion that the allegations are inextricably connected with the Vigilance Case then they should have waited till the criminal case concluded. Having initiated a disciplinary inquiry; without proper proof being adduced, there cannot be a finding of guilt entered and a penalty imposed on that count. We find absolutely no reason to uphold the findings in the enquiry since it is without any evidence and the Disciplinary Authority also could not have found the delinquent to be guilty on the basis of either the findings in the inquiry or the evidence thereat; which we found to be totally absent.

27. We set aside the enquiry and the punishment imposed. The appellant would be entitled to be restored to his position as on the date of his suspension and also entitled to full

back wages during his suspension till retirement and pension thereafter. There is no question of a fresh enquiry since the appellant has superannuated. We make it abundantly clear that our judgment shall have no bearing on the criminal trial pending; if it is so pending.

28. The Letters Patent Appeal is allowed leaving the parties to suffer their respective costs.

29. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

I agree

Rajiv Roy, J: I agree.

(Rajiv Roy, J)

P.K.P./-

AFR/NAFR	
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