
(2020) 12 PAT CK 0005

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 22251 Of 2018

Upendra Prasad Mandal

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Dec. 1, 2020

Acts Referred:

- Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 - Rule 9(1)(a), 9(1)(c), 9(2)(a), 17, 18(1)

Hon'ble Judges: Chakradhari Sharan Singh, J

Bench: Single Bench

Advocate: Y.V. Giri, Sanjay Kumar Giri, Pratyush Pratap Singh, S.Raza Ahmad, Alok Ranjan

Final Decision: Disposed Of

Judgement

1. The petitioner was working on the post of Block Supply Officer, Kochadhawan in the district of Kishanganj when he was arrested consequent upon

a raid conducted by a district level raiding party on the allegation of recovery of ill-gotten money from the petitioner's residence. An FIR was

registered against him and he was put under suspension in exercise of power under Rule 9(1)(a) read with 9(1)(c) and 9(2)(a) of Bihar Government

Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "the Rules") with effect from the date of his arrest i.e.

04.07.2015 vide Memo No. 6699 dated 21.08.2015. A departmental proceeding was initiated against him under Rule 17 of the Rules. An Enquiring

Authority and a Presenting Officer were appointed. Following is the gist of the charges framed against the petitioner in the departmental proceeding :-

1. In view of the complaint submitted by the PDS dealer of Kochadhaman Block about Upendra Prasad Mandal, Block Supply Officer,

Kochadhaman about asking for illegal bribe the Collector of Kishanganj through his memo no. 1183 dated 4.07.2015 constituted a raiding party. As per

direction of District Magistrate Mr. Bharat Bhushan, Director, DRDA, Kishanganj, made a raid at the rented house of Mr. Upendra Prasad Mandal,

Block Supply Officer, Kochadhaman situated at Linepada, Kishanganj, on 4.07.2015 at 11 AM.

2. That from the house of Upendra Prasad Mandal, block supply Officer, Kochadhaman, Rs. 25000/- alongwith some register was seized by the

raiding party constituted under Shri. Bharat Bhushan, Director, DRDA, Kishanganj on 4.07.2015.

3. After completion of the raid on basis of memo issued by the Director, DRDA, Kishanganj through his memo no. 884 dated 4.07.2015 against Mr.

Upendra Prasad Mandal, Block Supply Officer, Kochadhaman vide Office Letter No. 483 (C) dated 4.07.2015 an FIR bearing FIR No. 252 of 2015

dated 4.07.2015 was registered in Kishanganj Police Station.

4. As per the sequence of event the same currency notes were recovered from the house of Upendra Prasad Mandal, Block Supply Officer,

Kishaganj, which were handed over to District Administration in form of photo copy of currency note by the PDS dealer.â€

2. The petitioner submitted his written statement of defence asserting that he was implicated in the criminal case at the instance of PDS dealers and

that the District Magistrate, under the pressure of local MLA, in the presence of the said PDS dealers had conducted raid during which from the

petitionerâ€™s physical possession only a sum of Rs. 1320=00 was recovered. He asserted that the said raid was conducted in breach of mandatory,

statutory provisions. In relation to recovery of a sum of Rs. 25,000=00 along with certain official registers from the petitionerâ€™s house, he asserted

that it was not alleged against the petitioner that he was caught while accepting bribe from the dealers rather the amount was shown to have been

recovered from the petitionerâ€™s bed and his toilet. He also asserted that allegedly a seizure-list was prepared but it did not bear his signature. He

further asserted in his written statement of defence that he became victim of a conspiracy. He, thus, denied the charges and pleaded that his

implication in criminal case was on account of conspiracy hatched up by the PDS dealers because of strict measures taken by the petitioner against them.

3. The Enquiring Authority submitted his report on 23.09.2016, a copy of which has been brought on record by way of Annexure-6 to the writ

application. It is evident from the report of the Enquiring Authority that he did not record any finding to the effect that any charge of misconduct stood

proved in the departmental proceeding. He concluded, on the basis of charge memo, show cause of the charged officer, opinion of presenting officer

and the order passed on 07.08.2015 in Special Case No. 12 of 2015 by Special Judge, Vigilance-II, Patna that at the time of raid, signature of the

charged officer was not obtained on the seizure-list. At the time of raid local MLA was present. In the opinion of the Enquiring Authority, the chance

of "local politics" and conspiracy, leading to raid conducted in the petitioner's residence, could not be ruled out.

4. In any view of the matter, there is no finding of the Enquiring Authority to the effect that any of the charges stood proved. Nearly one year after

submission of the said report of the Enquiring Authority, a second show cause reply was sought for from the petitioner through letter dated 08.08.2017,

issued under the signature of the Additional Secretary, Food and Consumer Protection Department, Government of Bihar. It was mentioned in the said

second show cause notice dated 08.08.2017 that the Enquiring Authority had submitted report holding the charge of levying illegal money by him and

recovery of Rs. 25,000=00 and certain registers from his residence as proved.

5. Coming back to the finding recorded by the Enquiring Authority in respect of charge no. 1, the Enquiring Authority recorded that it was not proper

for him to record any opinion for the reason that the matter was subjudice before the vigilance court. In relation to charge no. 2, the Enquiring

Authority concluded that from the petitioner's possession a sum of Rs. 1320=00 was recovered. It is significant to note that even the presenting

officer had pleaded before the Enquiring Authority that as the matter was subjudice before the vigilance court, it would not be proper for him to

comment on the correctness or otherwise of the allegation made in the charge-memo, as is evident from the first report of the Enquiring Authority.

6. Be that as it may, the petitioner submitted his response to the so called second show cause notice reiterating the stand which he had taken in his written statement of defence. In his reply to the so called second show cause notice, the petitioner asserted that the findings recorded by the Enquiring Authority do not suggest that the charges framed against him were found to have been proved. The said reply was submitted by the petitioner on 22.08.2017. Subsequently, through letter dated 24.07.2018, issued under the signature of Additional Secretary, Food and Consumer Protection Department, Government of Bihar, the report of the Enquiring Authority was returned to the Enquiring Authority for further inquiry and report in purported exercise of power under Rule 18(1) of the Rules. It is evident on reading of the said letter dated 24.07.2018 (Annexure-8 to the writ application) that the inquiry report was returned because Enquiring Authority had recorded that since the vigilance court was seized with the matter, any action on the same set of charge, which is subject-matter of the criminal case before the vigilance court, should be taken in accordance with the final decision of the vigilance court. It was recorded in the letter dated 24.07.2018 that disciplinary proceeding could be allowed to continue independent of a criminal case and that it had nothing to do with the final decision in the criminal case. It was mentioned in the said letter that even if a government servant is acquitted of the criminal charge, if the charge of misconduct is proved in the departmental proceeding, punishment for such misconduct can be imposed in accordance with the Rules irrespective of any decision in the criminal case.

7. It appears, in response to the said communication of the department dated 24.07.2018, the petitioner was again asked to submit his explanation before the Enquiring Authority in relation to the charges framed against him. He again submitted his explanation on 21.08.2018 before the Enquiring Authority.

8. The petitioner, in the present writ application had initially challenged the order dated 24.07.2018 whereby the department had returned the report of the Enquiring Authority for further inquiry under Rule 18(1) of the Rules. He had sought for a direction from this Court commanding the respondents

to accept the report of the Enquiring Authority dated 23.09.2016 and vacate the order of suspension.

9. The petitioner by way of filing I.A. No. 01 of 2019 has sought for amendment in the writ application seeking quashing of letter dated 08.08.2017,

whereby and whereunder the petitioner was asked to submit his second show cause reply in response to the inquiry report submitted by the conducting

officer through letter dated 23.09.2016 treating the charges to have been proved, which was factually incorrect.

10. It appears that the Enquiring Authority again submitted his report, communicated to the Department of Food and Consumer Protection,

Government of Bihar through letter dated 19.01.2019, a copy of which has been brought on record by way of Annexure-12 to the supplementary

affidavit filed on behalf of the petitioner. The findings and conclusions recorded in this inquiry report are not materially different from what were

recorded in the first inquiry report. In this report also, the conducting officer, on the basis of the charge memo, the explanation of the petitioner, opinion

of the presenting officer and an order dated 07.08.2015, passed by the Special Judge, Vigilance-II, Patna, recorded that the petitioner's signature

was not obtained on the seizure memo. Further, in the FIR recovery of a sum of Rs. 28,000=00 has been mentioned, whereas the seizure memo

showed recovery of Rs. 25,000=00 only. Admittedly, during course of raid the local MLA was present and that the role of "local politics" and

conspiracy against the petitioner behind the said raid conducted in the house of the petitioner could not be ruled out. There is no finding in this report

also that either of the charges against the petitioner stood proved.

11. Again a second show cause notice was issued to the petitioner under the signature of Officer on Special Duty, Food and Consumer Protection

Department, Government of Bihar through letter No. 1495 dated 04.04.2019 asking the petitioner to submit his reply, as the charges against the

petitioner leveled in the charge memo stood proved. The petitioner again submitted his response.

12. Finally, by an order dated 16.08.2019, the Additional Secretary, Food and Consumer Protection Department, Government of Bihar has imposed

punishment of dismissal from service against the petitioner. The said order dated 16.08.2019 is sought to be assailed by seeking amendment in the writ application through I.A. No. 02 of 2019.

13. Since the petitioner had sought for quashing of the letter dated 24.07.2018 in the writ application, whereby the Disciplinary Authority had returned the report of the Enquiring Authority under Rule 18(1) of the Rules for further inquiry and since the final decision of imposing punishment of dismissal from service is integrally connected with the said action arising out of the same departmental proceeding, I.A. No. 02 of 2019 is allowed.

Consequently, the relief sought through I.A. No. 02 of 2019 shall be treated to be one of the reliefs sought for by the petitioner in the present writ application and the pleadings therein shall form part of the pleadings of the petitioner in the present writ proceedings.

14. I have heard Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner and Mr. Alok Ranjan, learned AC to AAG-5 at length.

15. A preliminary objection has been taken on behalf of the State of Bihar about maintainability of the writ application on the ground that the petitioner has statutory alternative remedy of appeal against the impugned order dated 16.08.2019.

16. Controverting the said submission on behalf of the State of Bihar, Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has submitted that since it is a glaring case of violation of principles of natural justice and impugned action is based on no evidence, this writ application cannot be said to be not maintainable on the ground of availability of alternative remedy. He has argued that availability of alternative remedy cannot create a bar for an aggrieved person to approach this Court in appropriate cases. The action of the State is palpably arbitrary, unreasonable and in breach of principles of natural justice.

17. I will deal with this aspect later, since on the basis of materials on record, which I have examined, I am of the view that the preliminary objection raised on behalf of the State is not sustainable.

18. Mr. Y.V. Giri arguing the petitioner's case has submitted that no evidence was led by the department before the Enquiring Authority which

could be the basis for recording finding of guilt against the petitioner. He has contended that for a charge to be proved in a departmental proceeding, the department has a duty to produce evidence in support of the charge(s). He has relied on Supreme Court's decision in case of Roop Singh Negi

Vs. Punjab National Bank reported in (2009) 2 SCC 570 with special reference to paragraphs 14, 15 and 16 thereof to argue that there was absolutely

no evidence to establish the charges framed against the petitioner before the Enquiring Authority. Even the complainant, on the basis of whose

allegation the criminal case was instituted and the disciplinary proceeding was initiated against the petitioner, was not examined during course of

inquiry. He has argued, relying on Supreme Court's decision in case of State of Uttar Pradesh and others vs. Saroj Kumar Sinha reported in

(2010) 2 SCC 772 that an employee facing departmental proceeding has a right to be treated fairly. He has contended that function of an enquiry

officer and a disciplinary authority in a departmental proceeding is of quasi judicial nature and, therefore, it is imperative for them to adhere to essential

requirements of principles of natural justice and fair play. He has next submitted, referring to the impugned order, that the same does not reflect at all

any consideration by the disciplinary authority of the petitioner's response to the so called second show cause notice. He has accordingly

submitted that the impugned order of dismissal suffers from the vice of violation of principles of natural justice.

19. Responding to the preliminary objection taken on behalf of the State of Bihar in respect of non-maintainability of the writ application on the ground

of availability of alternative remedy of appeal, he has relied on Supreme Court's decision in case of Popcorn Entertainment and another vs. City

Industrial Development Corporation and another reported in (2007) 9 SCC 593 and has contended that since it is a clear case of breach of principles

of natural justice, the petitioner could not be relegated to the appellate authority to avail his remedy of appeal. In support of the said legal proposition,

he has placed reliance on the Supreme Court's decision in case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others

reported in (1998) 8 SCC 1.

20. In support of his plea that the impugned order deserves interference by this Court in the present proceeding as it does not reflect any application of mind and any consideration on the points taken by the petitioner in his reply to the so called second show cause notice, he has relied on the decision of the Supreme Court in case of Oryx Fisheries Private Ltd. vs. Union of India and others reported in (2010) 13 SCC 42.7 He has contended that evidently the impugned order of the disciplinary authority is not on the basis of the inquiry report as the Enquiring Authority did not find the charges to have been proved. He has accordingly submitted that by deciding to put the petitioner on second show cause notice the disciplinary authority apparently disagreed with the report of the Enquiring Authority. In such circumstance, it was incumbent upon the disciplinary authority to have supplied to the petitioner tentative reasons for his disagreement with the report of the Enquiring Authority, before he recorded his own findings on such charge(s).

21. Relying on Supreme Court's decision in case of Punjab National Bank and others vs. Kunj Behari Mishra reported in (1998) 7 SCC 8,4 he has submitted that the impugned action suffers from violation of principles of natural justice requiring this Court's interference exercising power of judicial review of an administrative action.

22. Mr. Alok Ranjan, learned AC to AAG-5 has, on the other hand, contended that there is no infirmity in the impugned order. According to him, the impugned order has been issued with the approval of the disciplinary authority after examining the material available on the records of the disciplinary proceeding. He has submitted that while asking the petitioner to submit his response the essential facts were clearly mentioned as to what materials were there against the petitioner which proved the charges framed against him.

23. I have gone through the pleadings on record and have given my careful consideration to the submissions advanced on behalf of the parties. Four charges framed against the petitioner in the departmental proceeding have been noted hereinabove at the very outset which relate to a raid conducted by the Director, DRDA, Kishanganj leading to recovery of a sum of Rs. 25,000=00 from the petitioner's house and subsequent registration of an

FIR. The alleged raid was conducted on the basis of a complaint submitted by a PDS dealer to the effect that the petitioner had been collecting illegal money from PDS dealers misusing his position as Block Supply Officer. There is no dispute that the disciplinary proceeding in hand is based on the same set of allegations which were the foundation for lodging of the FIR.

24. As has been noticed above, there are two inquiry reports submitted by the Enquiring Authority. First one is dated 23.09.2016(Annexure-6 to the writ application) and the second dated 19.01.2019 (Annexure-12 to the supplementary affidavit filed on behalf of the petitioner).

25. Before I refer to the inquiry reports, I have considered it beneficial for the present adjudication to refer to the comments of the presenting officer

appointed by the disciplinary authority for the disciplinary proceeding against the petitioner. The said comments of the District Supply Officer-cum-

Presenting Officer dated 01.07.2016 is there on record at Annexure-5 to the writ application. I am taking into account the said comments to

appreciate the stand taken on behalf of the department to prove the charges framed against the petitioner. It is peculiar to note that the presenting

officer submitted before the disciplinary authority that it was within the jurisdiction of the vigilance court to enquire into and decide the correctness or

otherwise of the occurrence in question and, therefore, it was not proper for him to give any comment. He also mentioned, referring to the

explanation/ written statement of defence of the petitioner and the documents relied on by him that if, prima facie, it appeared that the petitioner had

been falsely implicated under any conspiracy, same could be subject-matter of a high level inquiry. Apparently, the presenting officer did not even

assert before the Enquiring Authority about the correctness of the allegation, much less, adduction of any evidence in support of the charges. The first

report of the Enquiring Authority has four columns, each referring to (1) charge/charges (2) the written statement of defence of the petitioner (3)

comments of the presenting officer and (4) the finding recorded by the Enquiring Authority respectively. The Enquiring Authority, in his finding, has

referred to the explanation of the petitioner, photograph and news item published in a local daily Dainik Jagran and on that basis he concluded that

during course of raid local MLA was present. He finally accepted the stand taken by the presenting officer that since the matter relating to correctness or otherwise of the occurrence in question was pending for inquiry and trial before the vigilance court, it would not be proper for him to record his findings thereon.

26. In relation to charge no. 2 regarding recovery of a sum of Rs. 25,000=00 from the petitioner's residence, the Enquiring Authority has again referred to news item published in a local daily and concluded that from the petitioner's physical possession only Rs. 1320=00 was recovered and the rest amount was recovered from other places of his residence. There is no finding by the Enquiring Authority that charge no. 2 against the petitioner stood proved. It rather appears that there was no evidence at all adduced before the Enquiring Authority by the presenting officer in respect of any of the charges.

27. From the second inquiry report, it appears that this time the presenting officer supported the charge and placed reliance on certain documents in support of recovery and seizure of cash from the petitioner's residence. He also produced the pre-trap and post-trap memoranda. In relation to charge no. 1, the Enquiring Authority recorded, considering the petitioner's explanation that chance of "local politics" or a conspiracy leading to alleged occurrence cannot be ruled out. In the opinion of the Enquiring Authority, the seizure memo did not bear the signature of the petitioner nor the seizure memo was made available to him. Charge no. 3, in the Court's opinion, does not constitute any misconduct as the same is mere statement of fact about registration of the FIR.

28. The Enquiring Authority finally concluded that there was discrepancy in the amount said to have been recovered from the petitioner's residence as mentioned in the FIR and that mentioned in the seizure-list. A local MLA was present during course of raid and, therefore, "local politics" and conspiracy behind the petitioner's arrest could not be ruled out. The second show cause notice dated 04.04.2019 was issued "as directed", under the signature of Officer on Special Duty in the Department of Food and Consumer Protection, Government of Bihar

wherein it is mentioned that there was no explanation in the petitioner's written statement of defence regarding recovery of a sum of Rs.

25,000=00 of the same denomination as mentioned in the pre-trap memorandum. He did not refer to any oral evidence in the second show cause

notice dated 04.04.2019, which was adduced during the departmental inquiry to support the charge.

29. This is not in dispute that even the complainant was not examined. The persons present at the place of occurrence were not examined. In fact, as

it appears from the inquiry report, that no witness at all was examined.

30. In such circumstance, I find force in submission made on behalf of the petitioner that it is a case of no evidence.

31. Further, the petitioner had submitted his response to the second show cause notice. It has been rightly submitted by Mr. Y.V. Giri that the

impugned order dated 16.08.2019 does not take into account the points taken by the petitioner in his reply to the second show cause. It has been

merely mentioned in the impugned order that no new fact was disclosed by the petitioner in his reply to the second show cause notice and the reply

merely reiterated the same facts which were narrated by him in his explanation submitted earlier. The impugned order does not contain any discussion

as to how the petitioner's reply to the second show cause notice was not acceptable to the disciplinary authority referring to the points taken

therein. The impugned order, therefore, suffers from non-application of mind.

32. It is well settled law in service jurisprudence that when a disciplinary authority disagrees with the report of the Enquiring Authority, before

recording its own finding in relation to charge(s) in a disciplinary proceeding, he must record tentative reasons for such disagreement. This is to be

done so as to enable the delinquent to persuade the disciplinary authority to accept the favourable conclusion of the Enquiring Authority [see (1998) 7

SCC 84, Punjab National Bank and others vs. Kunj Behari Mishra].

33. Exhaustive affidavits have been filed on behalf of the Respondents-State of Bihar. There is no assertion, however, nor any material has been

brought on record to suggest that any oral evidence was adduced before the Enquiring Authority to establish the charge of recovery of ill-gotten

money from the petitioner's residence or from his possession.

34. This is to be noted that charge of corruption in a departmental proceeding requires to be proved to the hilt, as has been held by the Supreme Court

in case of Union of India and others vs. Gyan Chand Chattar reported in (2009) 12 SCC 7.8 In case of Commissioner of Police, Delhi and others vs.

Jai Bhagwan reported in (2011) 6 SCC 376 the Supreme Court held that in absence of any definite/ clear proof it was difficult to draw a finding of

taking illegal gratification by the delinquent government servant from the complainant of that case. The Supreme Court ruled in the said case that non-

examination of complainant during the departmental proceeding had denied the delinquent of his right of cross-examination. In the present case, as no

witness was examined in support of the charge, there was complete absence of clear proof supporting the allegation against the petitioner of having

taken illegal money. Mr. Y.V. Giri, learned Senior Counsel has rightly relied on Supreme Court's decision in case of Roop Singh Negi (supra)

wherein the Supreme Court noticed that the management witnesses had merely tendered the documents and did not prove the contents thereof.

Paragraphs 14 and 15 of the decision in case of Roop Singh Negi (supra) are being reproduced hereinbelow :-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges

leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into

consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against

all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The

management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer

on the FIR which could not have been treated as evidence.

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.â€

35. It transpires from the pleadings on record that the department mainly relied on registration of FIR against the petitioner in the departmental enquiry

and no attempt was taken to adduce oral evidence before the Enquiring Authority to establish charge of corruption against the petitioner.

36. I have not referred to other submissions made on behalf of the parties since I am of the view that the impugned order imposing punishment of

dismissal from service requires interference by this Court on the ground that the said decision is based on no evidence adduced during course of

departmental proceeding in support of charge of corruption levelled against the petitioner.

37. Accordingly the impugned order dated 16.08.2019 (Annexure-13 to I.A. No. 02 of 2019), whereby punishment of dismissal from service has been

imposed against the petitioner, is quashed. This writ application is accordingly allowed.

38. Since it is case of disciplinary action taken despite complete lack of evidence, preliminary objection raised on behalf of the State of Bihar to the

effect that this writ application should not be entertained, there being statutory remedy of appeal, is hereby rejected.

39. Since the Court has interfered with the impugned order on the ground that it is a case of no evidence, the petitioner shall be entitled to all

consequential benefits in terms of salary for the period during which he remained out of service. He shall be entitled to all benefits as if no order of

dismissal was ever passed.

40. It has been stated at the Bar that the petitioner has retired upon attaining the age of superannuation during pendency of the writ application. It is

observed that respondents shall, however, be at liberty to proceed in accordance with law depending upon the outcome of the criminal case which is

pending against him.

41. All interlocutory applications stand disposed of.

42. There shall be no order as to costs.