

(2002) 06 PAT CK 0003

Patna High Court

Case No: Letters Patent Appeal No. 941 of 2001

The State of Bihar and
Others

APPELLANT

Vs

Sri. S.K. Verma

RESPONDENT

Date of Decision: June 26, 2002

Citation: (2002) 3 PLJR 255

Hon'ble Judges: Nagendra Rai, J; I.P. Singh, J

Bench: Division Bench

Advocate: Tara Kant Jha and Kaushal Kumar Jha, for the Appellant; V.K. Kanth and Mukul Sinha, for the Respondent

Final Decision: Allowed

Judgement

Nagendra Rai, J.

The State of Bihar and its officers, the Appellants, have filed the present appeal against the judgment dated 10th of September, 1999, passed by a learned Single Judge in C.W.J.C. No. 1524 of 1991 [S.K. Verma Vs. State of Bihar and Others](#), by which he has allowed the writ application filed by the writ Petitioner-Respondent (hereinafter referred to the writ Petitioner) and quashed the charge-sheet, enquiry report as well as the final order of dismissal passed against him.

2. The writ Petitioner was appointed as an Assistant Engineer in the Irrigation Department of the Appellant-State in 1962 and was promoted as Executive Engineer in Durgawati Dam Division No. 1. Complaints were received with regard to misconduct against him while he was posted there and a Flying Squad headed by the Superintending Engineer, namely, Shri Hari Sharan Singh, was constituted to make enquiry with regard to the allegations, which inspected the site in November, 1987 and April, 1988 and submitted two inspection reports on 25.1.1988 and 23.5.1988, copies of which were appended as Annexures 3 and 4, respectively, to the writ petition.

3. The matter was also referred to the Lokayukta, Bihar and he also directed for an enquiry by the Chief Engineer with regard to the general allegations in execution of the work at Durgawati Project on 21.6.1988. Admittedly, no enquiry report was submitted and as such that has no relevancy so far as the present case is concerned.

4. The reports submitted by the Flying Squad were examined at the departmental level and it was found that the writ Petitioner and a large number of other Engineers committed grave misconduct causing loss of crores of rupees to the Government. The writ Petitioner was suspended on 22.3.1990 in contemplation of a departmental proceeding, a copy of which was appended as Annexure 1 to the writ petition. The writ Petitioner filed a writ application being C.W.J.C. No. 2390 of 1990 before this Court challenging the said order. Before this Court, allegations were made against the head of the Flying Squad-Hari Sharan Singh by the writ Petitioner. This Court finally disposed of the matter on 30.7.1990 and directed the Secretary of the Department of Water Resources, Government of Bihar, to look into the aforesaid allegations against Hari Sharan Singh and in case the writ Petitioner was able to substantiate the aforesaid allegations, the order of suspension would be withdrawn. This Court further directed that the departmental proceeding, which had already been initiated against the writ Petitioner; should proceed and should be concluded preferably within four months from the date of production of the order. The order of this Court was received in the department on 10.8.1990. As the departmental proceeding was not concluded within four months, according to the writ Petitioner, he filed the present writ application, challenging the order of suspension, out of which this appeal arises.

5. While the matter was pending, it appears that the enquiry report was submitted by the enquiry officer and by order dated 14.11.1991 this Court directed the Appellant-State to serve a copy of the enquiry report on the writ Petitioner by 21.11.1991 and the writ Petitioner was directed to file a representation by 5.12.1991 by submitting it to the learned Advocate appearing on behalf of the State. The appropriate disciplinary authority was directed to pass a final order on the said enquiry report after taking into consideration the representation filed on behalf of the writ Petitioner and such decision was to be taken and the final order was to be passed by a speaking order by 26.12.1991. It was further said that this Court at the time of disposal of the matter would go into the question of validity of the enquiry report, suspension order and the action sought to be taken in the matter. This Court further ordered that the final order passed in the departmental proceeding shall not be given effect to until further orders of this Court. Thereafter, the writ application was not disposed at the admission stage, on the other hand, on 26.6.1995 it was admitted only for considering the legality of the order of dismissal that had been passed. The writ Petitioner filed a supplementary application challenging the enquiry report and the final order of dismissal dated 8.1.1992, copies of which were appended as Annexures 23 and 25, respectively, to the writ petition. The writ petition remained pending in this Court and in January, 1997, the writ Petitioner

superannuated from service.

6. The learned Single Judge, after hearing the matter, allowed the writ petition mainly on two grounds, firstly at the stage of charge-sheet itself, bias against the writ Petitioner has been expressed and secondly that no reasonable opportunity was given to the writ Petitioner in the departmental proceeding; inasmuch as no witness was examined and specially Head of the Flying Squad, namely, Hari Sharan Singh, was not examined as requested by the writ Petitioner.

7. Before proceeding further in the matter, it will be proper to indicate briefly the charges, which led to the initiation of the departmental proceeding against the writ Petitioner. A copy of the memo of charges was appended as Annexure 7 to the writ petition and it contains 9 charges against him. The English translation of the charge-sheet is given hereinbelow:

1. The original level block sheet of over burden of Durgawati spill way was got prepared by Shri O.P. Nurullah, Executive Engineer, and the original copy was received by you after obtaining a receipt in token thereof. It was an important record which bears the signatures of the Executive Engineer, all the Assistant Engineers, Junior Engineers and contractors of all group. You kept this important record hidden as a result of which payment for excavation work of spill way over burden was made provisionally and the possibility of wrong payment and manipulation cropped up. This shows your malafide intention and proof of conspiracy of wrong payment in connivance with contractors for which you have been found responsible.

2. Clay Blanketing work was done in the upstream of the dam between chain 5 to 11 of the dam. There is diversion channel of Kharsota river situated very near the upstream of the dam, which passes across chain 5 to 11 of the dam. The mouth of Durgawati river is also open. In such a situation, there was no justification of doing clay blanketing in the portion within 6 chains. The diversion channel is flowing towards this portion and the slope of the channel is also very steep as a result of which there is danger of flowing away this clay blanketing. This work should have been done at the time of river closure and not 4 to 5 years earlier. This improper work has been got done under a conspiracy with an intention to make payment to a contractor from two places for the same work and for which you have been found guilty.

3. Violating the circular of Technical Examiner Cell and brushing aside the seniority of registration, you disposed of the tender of clay blanketing between chain 5 to chain 11 in favour of Sarbshri R.K. Pandey and company and its tender was invited at your level. But from technical point of view this work in reality was to be done, at the time of river closure, just before start of water accumulation in the reservoir area in which there is delay of many years at present. Hence, irregularity has been committed in this work.

4. When the diversion work of Kharsota Nala was done in May-June 1987, the payment was made illegally for carrying the earth by mechanical means contrary to the agreement of carrying the earth by head-load and the earth was dumped towards the river in the middle of 5-11 chain of the Dam. The same dumped earth was shown as brought by mechanical means again within 5-11 chain of the dam for clay blanketing, thus the same work was done twice under two separate agreements in connivance with the contractor in which wasteful expenditure to the tune of Rs. 60 lacs was incurred. For this work only, you played a significant role conspiringly in preparing the plan, executing it and making wrong payment for the same for which you have been found fully guilty.

5. The earth of Kharsota Nala diversion had already been dumped at the places where-stripping work for blanketing has been shown. Hence, you have been found fully guilty for imaginary measurement of stripping work and irregular payment.

6. As a matter of fact, the earth was spread over without its compaction in clay blanketing. There was already mud at that place and without removing it the dumped earth was covered with debris and mud after spreading over the same. Thus wrong payment of Rs. 16,57,562/- was made apparently.

7. At the time of enquiry you and your Assistant Engineer were asked to show the place where the earth of 7,69,494 cubic feet for stripping work had been disposed. This measurement of stripping is an imaginary measurement for which you are held fully guilty.

8. It is evident from letter No. 12, dated 17.3.1988 of the Superintending Engineer that you kept your Superintending Engineer and Chief Engineer in dark for the payment of Clay blanketing whereas the payment had already been made on 29/2 itself without precheck. As per the prevalent rule the payment is made to the contractor only after the precheck but in order to conceal the wrong payment you have made the payment confidentially after keeping your senior officers in dark which, in all respects, indicates your malafide intention. The Superintending Engineer too had ordered to make payment of 50 per cent amount only for this work and you have been found responsible for it.

9. At, page 53 of measurement Book No. 278 a sum of Rs. 3,37,183/- has been deducted from the bill without showing any reason and again the same has been returned without showing any reason. As per rule, ban has been imposed on such type of "keep back" and deduction of money and returning of the same without stating any reason shows ulterior motive, for which you are held fully guilty.

Thus, the misappropriation of Government fund has been committed by you without any purpose under a conspiracy. You have been found fully guilty for such irregular acts.

8. The writ Petitioner was served with a copy of the memo of charges and was asked to show cause. He filed his show cause. Thereafter, Shri B.N. Upadhyaya was appointed as the enquiry officer. He conducted enquiry. It appears that most of the charges related to the verification of the documents and as such the relevant documents were produced.

9. The stand of the department is that all the documents, which the writ Petitioner required, were supplied to him or made available for his perusal. During the course of enquiry, he did not complain of non-supply of any document nor did he file any petition for producing said Hari Sharan Singh, who headed the Flying Squad for his examination. The enquiry officer submitted an enquiry report on 3.5.1991.

10. The writ Petitioner filed a representation in terms of the direction issued by this Court as stated above and all the matters raised in the representation were considered threadbare by the State Government and by order, running into 14 pages, it was found that all the charges, except charge No. 3, were proved and, accordingly, the order of dismissal was passed.

11. Learned Counsel appearing for the Appellant submitted that the learned Single Judge has erroneously held that the charges were vitiated as a result of bias. Nothing was produced on behalf of the writ Petitioner before the learned Single Judge to come to the aforesaid conclusion except bald allegation that Hari Sharan had animus against the writ Petitioner because the illegal appointments made by Mr. Sharan were cancelled by him. No material was produced to substantiate the aforesaid allegation. He further submitted that in a departmental proceeding, the delinquent employee is entitled to a reasonable opportunity of hearing and that was afforded to him in the sense that all the relevant documents, on which reliance was placed by the department, were supplied to him. It was not necessary to examine said Hari Sharan Singh as he had only submitted a report regarding the complaint made against the writ Petitioner, but no part of which has been relied upon to prove the charges. As a matter of fact, no prayer was made during the course of proceeding to examine aforesaid Hari Sharan Singh. Both the grounds given by the learned Single Judge for setting aside the order of dismissal are not tenable in law.

12. Learned Counsel appearing for the writ Petitioner, on the other hand, supported the judgment passed by the learned Single Judge and submitted that a perusal of the charge-sheet (Annexure 7) itself would show that the authorities had already made up their minds to punish the delinquent employee and no opportunity was given to the writ Petitioner in the proceeding in the sense that no witness was examined and main witness Hari Sharan Singh was not produced for his cross-examination even though a request to that effect was made by the writ Petitioner.

13. The law is well-settled that in a departmental proceeding this Court does not sit as an appellate forum in disguise. The jurisdiction of this Court is very limited and it

can interfere only if the enquiry is vitiated because of non-observance of the principle of natural justice or denial of reasonable opportunity of hearing or the finding is arbitrary and is based on no evidence or no reasonable person on the basis of the materials can come to the conclusion as arrived at by the disciplinary authority. This Court cannot go into the sufficiency of the material nor can it reappraise the material as an appellate forum to find out as to whether different view on the evidence can be taken.

14. It is equally well-settled that strict rule of evidence is not applicable in the disciplinary proceeding nor the allegations have to be proved like a criminal charge beyond reasonable doubt. The only requirement is that the enquiry should be conducted consistent with the requirement of principle of natural justice. He should be given opportunity to deny the charges and prove his innocence. The charges should be specific and clear and then he should be supplied with all materials, which may be oral or documentary or any one of them depending upon the facts of the cases and should be provided opportunity to cross-examine the witnesses in case the witnesses have been examined and should be further afforded an opportunity to prove his innocence by producing evidence and examining witnesses.

15. Memo of charges was annexed as Annexure 7 to the writ petition, which shows that there are nine charges against the writ Petitioner. In the concluding part of the charge-sheet, it has been stated that the charges have been proved and relying upon the said statement, the learned Single Judge held that there was bias in framing charges against the delinquent. On the basis of only that statement, such inference cannot be drawn. The memo of charges contained allegations asking the delinquent to file a show-cause. Mentioning one sentence in the memo of charges that the charges have been proved cannot be a ground to infer bias as subsequently an opportunity was given to the delinquent to file show-cause and, thereafter, the order of punishment was passed. The finding of bias arrived at by the learned Single Judge in paragraph 15 of the judgment is based on no reasons at all. The only ground, which the learned Counsel for the writ Petitioner wanted to show before this Court, is that there was bias in framing the charges against the writ Petitioner; inasmuch as the charges were framed on the basis of the report of a Flying Squad headed by Hari Sharan Singh, who was annoyed with the delinquent because of termination of services of a large number of employees appointed by him. This assertion has not been substantiated by any material on the record nor the learned Single Judge has said a word about the proof of the aforesaid fact. This apart, the counter-affidavit filed on behalf of the State shows that after Flying Squad submitted a report, the matter was enquired into by the Department and after being satisfied that a prima-facie case for initiation of a proceeding was made out, a departmental proceeding was initiated and memo of charges was prepared. Thus, there was no material at all to hold that there was allegation of bias while preparing the memo of charges against the delinquent employee.

16. From a perusal of the charges, it appears that the delinquent is alleged to have withheld the important documents with a view to help contractors who did blanketing work, which was not necessary at all or adopted mal-practices in excavation work as he made double payment for the earth excavated by showing it loading and unloading. The State Government produced relevant documents in support of the aforesaid allegation before the enquiry officer and on the basis of those documents, the enquiry officer found the charges to have been proved. There is no law that oral evidence must be adduced in all the departmental proceeding. It depends upon the facts of each case. The charges may be proved either by documentary evidence or by oral evidence or from the inference drawn from the materials available on the record. The nature of the charges was such that the same could be proved by producing the documents maintained in the office. As a matter of fact, the delinquent did not complain that any of the relevant documents was not supplied to him nor did he request for examination of any witness, nor did he request for production of any witness examined on behalf of the department for cross-examination, nor did he make any request for producing any document on his behalf. At this stage, it is important to mention that this Court had directed for conclusion of the enquiry within four months and the enquiry was to be concluded within four months and for that reason the proceeding was conducted within three days. The contention of the writ Petitioner, which has been found favour by the learned Single Judge, is that Hari Sharan Singh, Head of the Flying Squad, was not produced as a result of which he was not given reasonable opportunity to cross-examine him. As regards this point, it is stated that it is the specific averment in the counter-affidavit that no such prayer was made before the enquiry for. The writ Petitioner has relied upon letter dated 21.11.1990 in the form of notice issued by the enquiry officer, namely, Upadhyaya to Shri Kalanand Kumar, productive Engineer, Flying Squad Division No. 2, Patna, fixing 30.11.1990 as the date of enquiry and asking him to appear with a relevant documents and a copy of the notice was also sent to said Hari Sharan Singh, who by that time, had become Chief Engineer, Water Resources. This was only an information to the aforesaid Hari Sharan Singh about the fixation of the date in the enquiry. There is nothing the said document to show that any request was made by the delinquent to produce said Hari Sharan Singh for his cross-examination in the departmental enquiry.

17. Thus, there is no material on passed to show that during whole of the enquiry any prayer was made to examine aforesaid Hari Sharan Singh. Even assumption that any such request was made, the question is whether his non-examination prejudiced the delinquent employee or Hari Sharan Singh had made only an enquiry with regard to the charges and, hereafter, the matter was enquired into by the department, a decision was taken to (sic) a departmental proceeding, memo charges was prepared, proceeding was deducted and the delinquent was given opportunity. The report of the enquiry does not show that he has relied on the part of the report of Hari Sharan Singh coming to the conclusion that the charges have been proved.

He has only that the charges have been preferred/framed on the basis of the reported submitted by Hari Sharan Singh and then discussed the documents produced by department and arrived at the finding charges have been proved. Thus, non-examination has not at all prejudiced the writ Petitioner nor any of the findings arrived at during the enquiry is based on his report. Thus, I am unable to agree with the view taken by the learned Single Judge that the delinquent was deprived of a reasonable opportunity of hearing in the departmental proceeding. Though under the law, the final order in the departmental proceeding is not required to be elaborate one but as this Court had directed to dispose of the matter by passing a reasoned order, the disciplinary authority had considered each and every objections raised by the writ Petitioner with regard to the departmental proceeding and has found that out of nine charges, eight have been proved. The two grounds, which have been made basis by the learned Single Judge for setting aside the order of dismissal, are not sustainable in the eye of law.

18. In the result, this appeal is allowed, the impugned order passed by the learned Single Judge is set aside and the writ petition filed by the writ Petitioner challenging the order of dismissal is dismissed.

I.P. Singh, J.

19. I agree.