

(2005) 03 PAT CK 0104

Patna High Court

Case No: CWJC No. 8119 of 1999

Md. Faiyaz Ahmad

APPELLANT

Vs

State and Others

RESPONDENT

**Date of Decision:** March 7, 2005

**Citation:** (2005) 2 BLJR 1144

**Hon'ble Judges:** V.N. Sinha, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

V.N. Sinha, J.

Heard.

2. Petitioner who served on the relevant date as cashier-cum-store keeper in the Western Koshi Canal Division, Andhratharhi, has filed this application questioning the correctness and the validity of the order bearing memo No. 1657, dated 28.7.1999, annexure-1, whereunder he has been dismissed from service after conclusion of the departmental proceeding initiated against him on the charge of interpolating three cheques issued by the Executive Engineer of the said division and, thereby, defrauding the State Exchequer to the tune of Rs. 1,85,000/- and further caused loss to the State exchequer to the tune of Rs. 2,67,900/- on account of removal of the National Saving Certificates and passbook kept in his custody. He further withdrew the amount of Rs. 34,534 & 19,214.50 paise on the basis of forged bills submitted by him.

3. Petitioner has assailed the aforesaid order dated 28.7.1999, annexure-1, on the ground that in compliance of the directions of this Court dated 6.11.1998, annexure-4, he had appeared before the Chief Engineer on 28.11.1998 yet the authorities ignored his appearance on 28.11.1998, 2.12.1998 and notified in the Urdu Daily, namely, Kaumi Tanjim on 3.2.1999 that the petitioner has not appended in compliance of the directions of this Court dated 6.11.1998, annexure-4, and

thereby the authorities are unable to ensure compliance of the order dated 6.11.1998 and conclude the proceedings against the petitioner in compliance of the order dated 6.11.1998. The aforesaid submission has been made to suggest that feigned ignorance on the part of the authorities was deliberate and is indicative of malice which has ultimately resulted in the dismissal of the petitioner. The facts narrated hereinbelow shall, however, indicate that the authorities no sooner became aware of the appearance of the petitioner before the Chief Engineer on 28.11.1998 and before the Secretary of the Department on 2.12.1998 they issued order dated 27.2.1999, annexure-11, and placed the petitioner under suspension until conclusion of the proceedings in terms of the liberty granted by this Court under order dated 6.11.1998, annexure-4. Under resolution dated 12.3.1999, annexure-12 the enquiry/ presiding officer was appointed and the memo of charge in regard to interpolation and defrauding the treasury to the extent of Rs. 1,25,000 on the basis of the three interpolated cheques as also for removal of the National Saving Certificates and the passbook causing loss to the tune of Rs. 2,67,900/- and drawl of Rs. 34,534/- and 19,214.50 paise on the basis of forged bills was served on him. Having served the charge-sheet the date in the enquiry proceedings was fixed as 6.4.1999 at 11 a.m. as would appear from the letter dated 16.3.1999, annexure-13. Petitioner having received the charge-sheet filed his written defence on 20.4.1999, annexure-14 Copy whereof was given to the enquiry officer on 20.4.1999 itself, as would appear from the receipt granted by the enquiry officer on the said annexure-14. Perusal of the written defence indicates that the petitioner raised the plea of complete denial. According to the petitioner the allegations levelled against him were false as whatever amount he had withdrawn on the basis of the three cheques were withdrawn at the instance of the Executive Engineer, as according to him, the Executive Engineer had not only signed the cheques but had also counter-signed the interpolation. In regard to removal of the National Saving Certificates as also the other securities given by the contractor causing loss to the tune of Rs. 2, 67,900/- petitioner submitted that those securities were released under orders of the Executive Engineer, as such, he could not be held responsible for the removal of securities. As regards the forged bills drawing the amount of Rs. 35,534/- and 19,214.54 paise concerned he submitted that those amounts were deposited on 31.3.1986 and 18.12.1988 and he should not be held responsible for the said defalcation of the two amounts. The enquiry officer having perused the written defence filed by the petitioner on 20.4.1999, annexure-14 he fixed the date for enquiry in between 22.5.1999 to 29.5.1999 so as to conclude the enquiry proceeding on day to day basis vide his letter dated 17.5.1999, annexure-15. Having fixed the date of the enquiry proceedings between 22.5.1999 to 29.5.1999 under letter dated 21.5.1999 enquiry officer made certain queries from the petitioner in regard to his written defence dated 20.4.1999. Those queries are contained in the letter dated 21.5.1999, annexure-16 of the Enquiry Officer. Perusal of the queries made by the Enquiry Officer indicates that he asked the petitioner to explain as to how he could draw Rs. 1,85,000/- against the three cheques when each of the three

cheques was issued for Rs. 15,000/-. In regard to charge of removal of National Saving Certificates and other securities amounting to Rs. 2,67,900/- the enquiry officer asked the petitioner to explain as to how the passbook and the National Saving Certificates could be released in favour of the contractor without there being any release order issued by the Executive Engineer concerned. Similarly, in regard to charge Nos. 3 and 4, regarding withdrawal of Rs. 34,534 and 19, 214.54 paise on the basis of forged bills, the Enquiry Officer sought necessary clarification from the petitioner as to under whose authority the bills for drawl of the aforesaid amount of Rs. 34,534 and 19, 214.54 paise was passed and if those bills were authorised then under what circumstances the amount of Rs. 10,365,700/- and 5035.35 paise was again deposited on 31.3.1986 and 16.12.1988 the date fixed in the proceeding on 22.5.1999. Petitioner having received the aforesaid letter dated 21.5.1999, annexure-16, in order to avoid queries chose not to appear in the proceeding on 22.5.1999 then the enquiry officer issued the letter dated 22.5.1999, annexure-17, whereunder he categorically said that by not appearing in the proceeding petitioner is indicating his non-cooperation and he may take stern action against him. Having received the warning from the Enquiry Officer under letter dated 22.5.1999, annexure-17, the petitioner wrote out letter dated 24.5.1999, annexure-19, whereunder he categorically submitted that whatever replies he had to make on the charges leveled against him has already been made in the written defence and the petitioner is not willing to reply to the queries made under letter dated 21.5.1999, annexure-16. Having informed the Enquiry Officer that the petitioner is not willing to reply to the queries made by him wrote to the Enquiry Officer under letter dated 27.5.1999, annexure-18, that no subsistence allowance is being paid to him and it is not possible for him to appear in the proceedings. Enquiry Officer having received the letters of the petitioner dated 25, 26, 27. 5.1999, annexures-20, 21 and 18 called upon the petitioner under letter dated 12.6.1999, annexure-23, to peruse the relevant documents which were necessary to prove the charges levelled against him and further called upon him to submit his written comments on those documents by 14.6.1999 and thereafter Enquiry Officer closed the proceedings under letter dated 12.6.1999, annexure-35. Petitioner having received letter dated 12.6.1999, annexure-23 wrote out letter dated 12.6.1999, annexure -36, addressed to the Enquiry Officer whereunder he refused to peruse the documents which were produced for his comments and were the basis to prove the charges levelled against him as those documents were not legible copies of their respective originals. Petitioner was paid his subsistence allowance including arrears of salary on 14.6.1999 pursuant to the sanction order bearing letter No. 373 dated 20.4.1999.

4. During the hearing of this application learned counsel for the petitioner, with reference to letter dated 12.6.1999, annexure-36, submitted that such documents which are relied by the Deptt in support of the charges were not legible, as such, petitioner could not offer his comments and the enquiry officer without the benefit of the comments of the petitioner has submitted the enquiry report dated

14.5.1999, annexure-25, as such, the same should be set aside and the legible copies of the documents referred to in the letter dated 12.6.1999, annexure-23, he made available to the petitioner, so that, he may offer his comments thereon and then the proceeding should be taken to its logical conclusion.

5. Having appreciated the weight of the aforesaid submissions, this Court under order dated 28.2.2005 called upon the counsel for the State to produce before this Court the proceeding file of the Enquiry Officer so as to verify the correctness of the submissions made by the petitioner that the documents produced by the Deptt. for proving the charges levelled against him were not legible. The State Counsel in compliance of the order of this Court has produced the departmental proceeding file. I have perused all the documents referred to in the letter dated 12.6.1999, annexure 23, in the departmental proceeding file and to me it appears that all the documents referred to in the letter dated 12.6.1999, annexure-23, are legible and, thus, the stand taken by the petitioner in his representation dated 12.6.1999, annexure-36, that the documents produced in support of the charge were not eligible is wholly misconceived and is, accordingly, rejected. Having satisfied myself about the legibility of the documents produced in support of the charge, I have examined the enquiry report of the enquiry officer dated 14.6.1999, annexure-25, wherefrom it appears that the charge of interpolating the three cheques drawn for Rs. 15,000/- and on that basis drawing of Rs. 1,85,000/- has been proved on the basis of the report of the Branch Manager of the State of India, Madhubani Branch, who certified that against the three cheques petitioner withdrew a sum of Rs. 1,85,000/-. In support of the aforesaid charge the zerox copy of the three cheques have also been produced wherefrom it appears that the interpolation in the three cheques were counter-signed by the Executive Engineer as well who had issued the same and the bank made payments on that basis. Perusal of the enquiry report further indicates that the removal of the National Saving Certificates including the passbook of Rs. 2,67,900/- and odd from the office of the Executive Engineer Was secured on the basis of the forged release orders said to have been signed by the Executive Engineer concerned. Petitioner being the Cashier and Store Keeper of the Division was the custodian of the securities and before releasing the securities worth Rs. 2,67,900/- he was duty bound to have verified the genuineness or otherwise of the release orders. The finding recorded by the enquiry officer that the petitioner is guilty of the second charge also does not call for any interference. So far charge Nos. 3 and 4 is concerned, the same is also proved as from the report of the Enquiry Officer it appears that the petitioner deposited part of the defalcated amount which amply proves the charges of defalcation and, thus, the finding of the enquiry officer in regard to charge Nos. 3 and 4 also does not call for any interference.

6. Learned counsel for the petitioner, however, submitted that in support of the second charge petitioner wanted to examine the Executive Engineer with reference to his own FIR dated 16/6/1986, annexure-30, whereunder Executive Engineer had stated that the securities including the National Saving Certificates and the

passbook were not made over to the petitioner. If the petitioner wanted to examine the Executive Engineer he should have produced him for examination as a witness before the Enquiry Officer. Enquiry Officer in his letter dated 21.5.1999, annexure-16, having ruled that the charges levelled against the petitioner were such which could be proved with reference to documentary evidence as such in my opinion, the departmental authorities were not obliged to produce the Executive Engineer for his deposition and examination in the proceeding initiated against the petitioner.

7. From the discussions made above, it would appear that all the charges levelled against the petitioner have been proved on the basis of the documents, i.e., the interpolated cheques, report of the Branch Manager and the report of the Executive Engineer that the release orders were forged as, such, I do not see any ground to interfere with the impugned order. The present writ application is, accordingly, dismissed with observation that the departmental authorities should also proceed against the Executive Engineer for major punishment as perusal of the three cheques do indicate the interpolations were counter- signed by the Executive Engineer as well who is also equally responsible like the petitioner. The charges levelled against the petitioner is also the subject of two criminal cases which is pending trial. As such, this writ application although dismissed at this stage but with liberty to the petitioner to request the departmental authorities for review of the punishment imposed on him in the event he is acquitted on merit in both the criminal cases. Acquittal on the ground of lack of evidence shall not entitle the petitioner to such review of the punishment.

Application stands dismissed with aforesaid observation. No cost.