

**(2019) 02 PAT CK 0037**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 14828 Of 2011

Ashok Kumar Pathak

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision :** 21-02-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14

**Citation :** (2019) 02 PAT CK 0037

**Hon'ble Judges :** Shivaji Pandey, J

**Bench :** Single Bench

**Advocate :** Dr. Shashi Shekhar Kishore, Rajesh Kumar, Rishi Raj Sinha, Saurabh Kumar

**Final Decision :** Allowed

## Judgement

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order of dismissal dated 1185 dated 23.8.2010 (Annexure-7) by which the petitioner has been dismissed from service as well as directed to recover 1/3rd amount of Rs. 312.57 lacs from the petitioner.

The petitioner at the relevant point of time i.e. during 5.11.2005 to 19.4.2007, was serving as a Head-clerk of Palasi Block, Araria. While posting there, on the instruction of the Block Development Officer, he deposited the money of centrally sponsored scheme of Indira Awas Yojana in DEHTI PACS instead of depositing the same in the nationalized bank in the background of the letter of Deputy Development Commissioner, Araria vide Memo No. 1736 dated 2.12.2000 had permitted deposited S.G.R.Y. fund in the PACS account. In pursuance thereof, the Block Development Officer opened the account in DEHTI PACS on 17.1.2004 vide Account No. 13 and for flood relief (Indira Awas) Account No. 48 was opened on 30.1.2004 by Md. Shamim Akhtar, the then Block Development Officer, Araria, on account of deposit of money, initiated a departmental proceeding issuing Charge-sheet dated 25.7.2009 (Annexure-3) making an allegation that the petitioner had

opened the account in the DEHTI PACS and deposited the money in violation of the guideline relating to the fund of Central Government under the Indira Awas. In violation of direction, the Deputy Development Commissioner, Araria vide Memo No. 977 dated 26.9.2006, letter no. 1125 dated 21.11.2006 and letter no. 163 dated 13.10.2007 by which an instruction was given to deposit the money of Indira Awas Yojana to the Nationalized Bank instead of depositing the money in the DEHTI PACS.

The Deputy Election Officer was appointed as Enquiry Officer and the then Block Development Officer was appointed as Presenting Officer. The petitioner filed his show-cause, Annexure-5, from the enquiry proceedings, it appears in the order-sheet that the Enquiry Officer completed the entire proceeding in five sittings, first date of proceeding is dated 9.9.2009 which indicates calling upon the petitioner to file show-cause and, on the next date i.e. on 10.10.2009, the present petitioner was present and the Presenting Officer was absent, on next date fixed on 26.10.2009, on that date, the petitioner filed his show-cause but, the Presenting Officer remained absent, next date was fixed on 5.11.2009, on that day also, the petitioner was present but, the Presenting Officer remained absent. On next date, the Disciplinary Authority directed the Presenting Officer to give his own comment. On 3.12.2009, the Presenting Officer submitted his comment, the enquiry closed, fixed for the report, whereafter, the Enquiry Officer submitted his report dated 8.2.2010 finding the charges proved against the petitioner. The District Magistrate, Araria vide Memo No. 630 dated 24.4.2010 served the enquiry reported to the petitioner for his second show-cause which was filed by the petitioner dated 14.6.2010, has stated that neither he had opened the account nor he had deposited any money to the DEHIT PACS, further said that the document relating to deposit of the money was never placed before the petitioner nor he had ever recommended for depositing the money in the DEHIT PACS. Further plea has been taken that the block offices was under the supervision and control of the Block Development Officer who used to take a policy decision. Further said that there was no role of Head-clerk in opening and depositing the money. He has further said that many times, he verbally shown caution to the Block Development Officer about depositing the huge amount in the DEHTI PACS. The staff working under the superior authority will have little courage to oppose the move of the higher authority. Even then he has given his note that it will not be feasible and proper to deposit the money in the Dehti PACS which can be verified by calling the concerned records from Nazarat. Many a times, he has raised this issue but, never his advice was taken seriously, continued to deposit the central sponsored fund in the DEHTI PACS. He was not substantively promoted to the post of Head-clerk but, he was orally asked to discharge the duty of Head-clerk. Further said that he has not suppressed anything from the Disciplinary Authority, wrongly the responsibility has been shifted upon the petitioner. Learned counsel for the petitioner has drawn attention of this Court towards the enquiry report which is part of the counter affidavit as Annexure A/2.

Learned counsel for the petitioner has raised two points, firstly, the primary responsibility to run the office of the block lies with the Block Development Officer and all the concerned work was under the supervision and control of the Block Development Officer. In the present case, in the Dehti PACS, for depositing the money of Indira Awas Yojana, the account was opened on 14.1.2004 by Block Development Officer, Jogeshwar Prasad Chorwar, Md. Shamim Akhtar another Block Development Officer had opened the SGRY Account No. 13 on 30.1.2004 and Surendra Rai, the then Block Development Officer had opened the account on 12.01.2006 for depositing the money of 12th Financial Commission Plan Yojana and he has submitted that the Shamim Akhtar deposited Rs. 16 lacs in between 17.9.2004 to 5.4.2005, Ashok Kumar Tiwari deposited Rs. 172.2 lacs in between 16.5.2005 to 30.8.2005, Surendra Rai had deposited Rs. 765.50 lacs during period 5.11.2005 to 19.4.2007 and Gayanand Yadav deposited Rs. 223.25 lacs during the period 9.8.2007 to 21.8.2007 and it has been mentioned in the report that during the period 13.9.2006 to 30.3.2008, through 213 advices, the money relating to Indira Awas Yojana for Rs. 7,14,79,700/- was deposited in the DEHTI Pacs and after distribution, Rs. 471/- was left in the account of DEHTI PACS.

Learned counsel for the petitioner submits that the report itself shows that the money relating to Indira Awas Yojana was deposited by the Block Development Officer and the petitioner had no role in opening of any account on any head nor he had deposited the money in the DEHTI PACS, all actions have been taken from opening and operating the account by the Block Development Officer. He has further said that the departmental enquiry was farce as on each and every date, except the final date, the Presenting Officer remained absent and the finding has been recorded on the basis of explanation as well as comments made by the Presenting Officer whereas the Disciplinary Authority would not act as an agent of the Government rather he has to maintain neutrality, placed reliance in the judgment passed in the case of State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772 and further he has argued that the allegation having been not proved against the petitioner either through the oral evidence or any material was brought to substantiate the allegation and, in the departmental enquiry, in case the government servant deny the allegation, in such circumstances, it is the duty of the Presenting Officer to prove the charge by bringing the oral and documentary evidence but, in the present case, the fundamental principle for departmental proceeding has not been followed.

Reliance has been placed in the judgment in the case of Roop Singh Negi Vs. Punjab National Bank & Ors. reported in 2009 (2) SCC 570 and further said that the disciplinary proceeding was initiated against all the Block Development Officers who were posted at the relevant time, they were visited with the punishment which were challenged before this Court by different writ applications such as C.W.J.C. No. 14595 of 2012 (Surendra Roy Vs. The State of Bihar & Ors.), C.W.J.C. No. 20862 of 2012 (Gayanand Yadav Vs. The State of Bihar & Ors.), C.W.J.C. No. 7002 of 2014 (Perwez Nazir Vs. The State of Bihar & Ors.)

and other staffs of different blocks such as Nazir of Palasi block namely Matiur Rahman in C.W.J.C. No. 2835 of 2018, Head Clerk of Block Farbisganj, namely, Amba Prasad Yadav in C.W.J.C. No. 5748 of 2014 have approached this Court challenging the order of punishment awarded to the aforesaid persons and, against all the persons, identical allegation was made with regard to depositing the money of Indira Awas Yojana in DEHTI PACS and this Court has quashed the order of punishment passed against the respective persons. In such circumstances, the petitioner submits that he cannot singularly be visited with the punishment of dismissal. It has further been submitted that those Block Development Officers who were departmentally proceeded and punishment was awarded, after quashing of the order, they have been promoted to the next level. In such circumstances, when the petitioner neither had opened the account nor deposited the money rather every action was taken by the Block Development Officer, in such circumstances, the order punishment is nothing but, an abuse of the process of authority vested to the District Magistrate. It has further been said that he is entitled to the protection of equality as provided under Article 14 of the Constitution of India, when the higher authority having opened the account and deposited the money have been left out, in such circumstances, it requires interference of this Hon'ble Court whereas learned counsel for the State has vehemently opposed the learned counsel for the petitioner having stated that the money was deposited by the petitioner against the norms prescribed in the Indira Awas Yojana as well as against the instruction issued by the Deputy Development Commissioner, Araria.

Having considered the rival contention of the parties, this Court cannot act as an appellate court rather the Court has to exercise the power of judicial review on the guideline provided by the Hon'ble Apex Court in different judgments. It will be relevant to place reliance on the judgment in the case of B.C. Chaturvedi Vs. Union of India & Anr. reported AIR 1996 SC 484, another judgment in the case of Union of India & Ors. Vs. P. Gunasekaran reported in 2015(2) SCC 610 wherein the Hon'ble Apex Court said that the High Court while exercising the power of judicial review will not act as an appellate court rather has to examine as to whether the disciplinary proceeding has been acted properly, fairly and the material are sufficient to prove the charge leveled against the government servant and further the materials which were required to be looked into having been left out and certain materials which were not required to take into consideration has been made basis for arriving to a finding against the government servant and further the findings are against the weight of the evidence and also interfered in the event of severe finding, at the same time, the punishment can be interfered when it is so outrageous to the logic of the defiance that no reasonable person can award the punishment and the Court has to see the decision making process not the decision, reliance in this connection can be placed in the judgment passed in the case of Coimbatore District Central Cooperative Bank Vs. Coimbatore District Central Cooperative Bank Employees & Anr., 2007(4) SCC 669 and the Bank of India Vs. T. Jogram, 2007 (7) SCC 236.

It has also been laid in the case of Saroj Kumar Singh that the Enquiry Officer has to act as independent arbiter and cannot act as an agent of the Government or the Management but, he has to maintain neutrality. In the case of Roop Singh Negi, the Hon'ble Apex Court has said that the charges has to be proved by bringing the oral as well as documentary evidence to substantiate the charge but in the present case, the proceeding itself reflects that the enquiry was completely a farce enquiry as in all the dates except the final date, the Presenting Officer had appeared and filed his comment, did not bring any material, oral or documentary, to show that the petitioner had opened the account as well as had deposited the money in that account rather the document attached by the government itself clearly reflects that the account was opened by different Block Development Officers for different purposes in different period and the money was deposited by different Block Development Officers themselves not by any sub-ordinate staff working in the Block.

Inasmuch as, as has been stated herein above, the Block Development Officer, who had worked during that period, having their punishment quashed by this Court by different orders passed in different writ applications, in such circumstances, the order of dismissal against the petitioner cannot survive on account of illegality committed by the Enquiry Officer as well as the findings are based on no evidence in the sense that the Presenting Officer failed to bring any material evidence, either in the shape of oral and documentary, to substantiate the allegation made against the petitioner. In that view of the matter, the order of punishment dated 23.8.2010 (Annexure-7) is quashed. In the result, this writ application stands allowed.