

In The Court of Commissioner, Saran Division, Chapra  
Service Appeal No. 180/2014  
Banarash Thakur

Vrs.

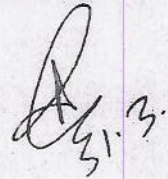
D.M. Gopalganj

**ORDER**

The instant appeal is directed against the impugned order passed by the D.M. Gopalganj as contained in memo No. 311/panchayat dt. 09.06.2014 whereby and whereunder the appellant was dismissed from service on the alleged charges that he was arrested red handed by a trap team of vigilance deptt. while accepting bribe.

The brief facts of the case are that the appellant Banarash Thakur, S/o Late Hiralal Thakur, R/o Vill-Mohammadpur, P.S-Mohammadpur, Dist-Gopalganj was at the relevant time, posted as panchayat Sachiv in Sidhwalia Block of Gopalganj district. The further case is that he was arrested red handed by vigilance sleuth on 26.03.2009 while allegedly taking bribe. Pursuant to this he was placed under suspension vide order dt. 18.04.2009 and subsequently he was released from custody on bail and thereafter he joined on 28.08.2009 and accordingly, D.M. Gopalganj vacated his suspension and ordered for deptt. proceeding to be initiated against him vide memo No. 397/dt. 07.03.2011. Thereafter, in course of review of charges against the appellant he was again suspended by D.M. vide memo No. 14/dt. 05.02.2014. The enquiry officer submitted the enquiry report 05.04.2010 for the charges earlier framed against the appellant. However, supplementary charge sheet was also obtained from BDO, Sidhwalia and the D.M. Gopalganj acting as disciplinary authority before imposition of punishment asked second show cause from the delinquent which was submitted by him and on finding that the appellant failed to furnish sufficient evidence in his defence or to disapprove the charges, the D.M. decided to dismiss the appellant from service for the proved charges of corrupt practices vide order dt. 09.06.2014.

On being aggrieved by and dissatisfied with the aforesaid order of dismissal from service, the appellant has preferred this appeal petition before this Court.

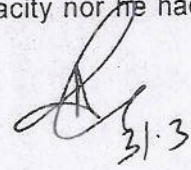
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Heard the learned Counsels for the parties.

The learned Counsel appearing on behalf of the appellant submitted that although the appellant strongly denied the charges levelled against him and without examining any witnesses, the enquiry officer submitted his report and the learned D.M. passed the dismissal order which is illegal and arbitrary because no reason has been assigned for dismissal of the appellant in the impugned order. He further submitted that since allegations levelled against the appellant was totally false and concocted and enquiry for which is still pending and the vigilance case is also pending in the Court and he has not been declared guilty, this order of dismissal is against law, principle of natural justice and violation of Art. 14 of the constitution. The learned Counsel also filed a copy of the judgement passed by Hon"ble High Court in a similar nature of case in order to substantiate his point. The learned Counsel lastly prayed that the impugned order be set aside and this appeal be allowed.

The learned G.P. appearing on behalf of the D.M. Gopalganj submitted that it is not in dispute that the appellant has been arrested by the vigilance team but this appeal has no merit as the charges against the appellants were proved in the deptt. enquiry and it was on the basis of proved charges of misconduct, the dismissal order has been passed against the appellant.

Considering the facts and circumstances of the case, material on records and on going through the respective submission advanced by the learned counsel for the parties, it is seen that the charges framed and deptt. proceeding against the delinquent has been conducted because of his arrest by vigilance team for taking bribe. The learned counsel for the appellant is of the view that the criminal trial for the said offence against the appellant has not yet been concluded nor he has been held guilty by the vigilance Court, then there is no occasion for the authority to pass the dismissal order. This proposition may be true to some extent. This proposition may be true but only to the extent when the charges in departmental proceedings and criminal trial are identical and are based on same grounds & evidences. However the instant case is different for even if it is presumed that the money that he evidently took was not by way of bribe, it still remains a misconduct under Rule 3(1)(i)(ii)(iii), 17(5)(1) and 17(6) of Bihar Government Servant Conduct Rule 1976 since neither he had any bonafide reasons for entering into such a financial transaction in his official capacity nor he had

  
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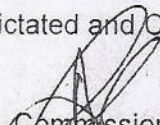
informed or sought any permission from his controlling authority for such a financial transaction.

On the other hand, it is clear that such a financial transaction indeed took place as he was caught red handed and it is also clear that it was a case of gross financial irregularity and misconduct on his part as proved in the departmental proceedings. It may also be noted that unlike a criminal trial, where conviction is based on proving of charges beyond reasonable doubts, in a departmental proceeding, the charges are proved on the basis of preponderance of evidences. It is also well settled in law that criminal trial and departmental proceedings can proceed separately in the given situation.

As far as the charges are concerned, it is clear that they are found true in the departmental proceeding following due process. The appellant on the other hand could not furnish any evidence or argument in support of his case. His claim that the impugned dismissal order is illegal and arbitrary is a mere assertion which is baseless and devoid of any merit. It is already noted that the said financial transaction itself was illegal and gross misconduct on his part. It is also clear that departmental proceeding was concluded following the due process and giving adequate opportunity to the appellant to defend his case. Hence there exists no substantive or procedural infirmity in the impugned order of the District Magistrate. Besides, it is also held that the punishment of dismissal is not at all excessive since the charges are of corruption which are quite grave warranting such strict punishments only.

In view of the above, there is no ground to interfere with the impugned order which is hereby confirmed and the appeal is accordingly rejected.

Dictated and Corrected by me.

  
Commissioner,  
Saran Division, Chapra

 31.3.15  
Commissioner,  
Saran Division, Chapra