

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8943 of 2015

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Udranand Bishwas, son of Late Mahendra Prasad Bishwas, Resident of Village-
Jagir Halalia, P.S. Simraha, District Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Deputy Secretary (Vigilance), Road Construction Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha
Mr. P.R. Srivastava, Advocate
Mr. Shivjee Singh, Advocate
Mr. Mukesh Kumar, Advocate
For the State : Mr. Prabhat Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-08-2016

Heard Mr. Purushottam Kumar Jha, learned counsel
appearing for the petitioner and Mr. Prabhat Kumar, learned
Assisting Counsel to Government Advocate No.11 for the State.

The petitioner prays for issuance of appropriate writ for
quashing the resolution bearing Memo No.4955 dated 4.6.2015 of
the State Government issued under the signature of the Deputy
Secretary (Vigilance), Road Construction Department,
Government of Bihar, Patna, whereby a disciplinary proceeding
has been initiated against the petitioner under the provisions of
rule-17 of the Bihar Government Servant (Classification, Control
and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules of

2005').

In the nature of the order which this Court proposes to pass, it is not required to go into the merits of the case for it is the very initiation of the proceeding which is put to challenge by the petitioner and the grounds raised to question the same is present at Annexure-5 which is a letter of the Deputy Secretary (Vigilance) informing the petitioner that he stands discharged from the charges.

It would be relevant to also mention here that while during the pendency of the writ petition the enquiry so initiated is complete, and the enquiry report has been submitted whereafter the petitioner has been put to second show cause.

Mr. Purushottam Kumar Jha, learned counsel for the petitioner while going through the sequence of events in which initially six charges were framed against the petitioner vide Annexure-2 which is dated 20.9.2013 submits that three more charges were added on 27.1.2014 vide Annexure-3. A reply was filed by the petitioner on 29.1.2014 vide Annexure-4 and it is in consideration thereof that the petitioner was discharged of the allegations vide Annexure-5. Learned counsel has referred to certain file noting enclosed in the proceeding to submit that of the 12 persons charged and proceeded for allegation regarding inferior



quality of the road constructed by them, 5 were discharged of the allegation and the enquiry proceeded only against 7. He submits that even when the Departmental Secretary has accepted the explanation of the petitioner to drop the proceeding, it is on a review of the matter that the order of initiation of the proceedings under section-17 of 'the Rules of 2005' has been passed which suffers from the following illegalities:

- a) The order initiating disciplinary proceeding is a review of the order dropping the proceedings present at Annexure-5;
- b) Though the appointing authority of the petitioner is admittedly the State Government but in absence of any specific qualification, and in view of the amendment introduced to 'the rules of 2005' vide notification dated 20.3.2007 more particularly the table provided thereunder, the Departmental Secretary is fully empowered to take a decision in cases where the appointing authority is not specified, as in the present case;
- c) The decision to initiate proceeding against the petitioner is contrary to statutory provisions underlying rule-17 of 'the Rules of 2005' itself; and

d) The decision to initiate proceedings against the petitioner is discriminatory for on similar charges whereas the State has chosen to drop the proceedings against five of the notices but has proceeded against 7 including the petitioner.

Although Mr. Jha, learned counsel for the petitioner also tried to address the Court on the merits of the proceedings as well as on the infirmity of the enquiry report but considering the issue raised herein, I would not be entering into those issues for if the order placed at Annexure-1 is held valid its consequences would obviously follow.

Mr. Prabhat Kumar, learned A.C. to G.A.-11 has produced the records to submit that the order present at Annexure-5 is an order issued on the directions of the Departmental Secretary and does not have the approval of the Minister -in- charge. He submits that in fact when the matter reached the Minister -in- charge that it was decided to continue with the proceedings and in terms of the Rules of Executive Business, the decision so taken would be the order of the State Government in so far as it relates to initiation of the proceedings against the petitioner and which would not amount to a review of an earlier order.

I have heard learned counsel for the parties and I have

perused the records.

Mr. Jha, learned counsel appearing for the petitioner had referred to the provisions of rule-2(b) of 'the Rules of 2005' which defines an order of the Government to mean executive orders passed in exercise of powers given under Rules of Executive Business framed under Article 166 of the Constitution of India. It is not in dispute that the petitioner who is holding the post of Executive Engineer, his appointing authority is the State Government. Rule-9 of the Rules of Executive Business framed under Article-166 of the Constitution of India *inter alia* provides that the Council of Ministers shall be collectively responsible for all advice tendered to the Governor and all the executive orders issued in the name of Governor in accordance with these rules whether such advice is tendered or such orders are authorized by an individual Minister on a matter appertaining to his portfolio or as the result of discussion at a meeting of the Council or however otherwise. Rule-11 of the Rules of Executive Business *inter alia* provides that the Minister-in-Charge of the department concerned, shall be primarily responsible for disposal of the business appertaining to the department. Rule-21 though is an enabling provision for delegation of power to the Departmental Secretary for disposal of business but there is nothing on record to show that



power stands delegated. Rule-22 of the Rules of Executive Business enables each Minister by means of standing order to arrange the matters or classes of matters with the Principal Secretary/Secretary with copies endorsed to the Governor and Chief Minister and sub-rule (2) thereof relates to cases of class-II officers. The relevant rule in the present context would be rule-32 which provides that all cases would be submitted by the Principal Secretary/Secretary in the department to the Chief Minister for appropriate orders.

A collective appreciation of the Rules of Executive Business as discussed above read along side 'the Rules of 2005' would leave no room for confusion that the ultimate decision for dropping or for initiation of disciplinary proceeding, ultimately rests on the State Government and even if according to the Department Secretary, the explanation given by the petitioner was sufficient to drop the charges, in my opinion until such decision of the Departmental Secretary had the approval of the State Government and an order to that effect was issued in the name of the Governor as mandated under rule-9 of the Rules of Executive Business, it would not be an order of the State Government rather would remain an opinion of the Departmental Secretary.

For the reasons so discussed above, I find no illegality or



infirmity in the resolution dated 4.6.2015 impugned at Annexure-1 and since the initiation of proceeding vide Annexure-1 does not call for interference, I do not feel the necessity to go into the merits of the enquiry report at this stage. The petitioner would be at liberty to question the same at an appropriate stage but for the reasons aforementioned I find no merit in the contest to interfere with the disciplinary proceedings at this stage.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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AFR	
CAV DATE	
Uploading Date	16.9.2016
Transmission Date	