

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13705 of 2006

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Bishwanath Dubey, son of late Rameshwar Dubey, resident of village and P.S.-
Jogbani, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Water Resources Development Department, Government of Bihar, Sinchai Bhawan, Patna.
3. The Deputy Secretary, Minor Irrigation Department, Government of Bihar, Sinchai Bhawan, Patna.
4. The Joint Secretary, Minor Irrigation Department, Government of Bihar, Sinchai Bhawan, Patna.
5. The Chief Engineer, Minor Irrigation Department, Muzaffarpur.
6. The Superintending Engineer, Minor Irrigation Circle, Muzaffarpur.
7. The Executive Engineer, Minor Irrigation Division, Hajipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Kanth, Sr. Advocate
Mr. P.N. Pathak, Adv.

For the Respondent/s : Mr. Devendra Kumar Sinha, AAG-2
Mr. Sudhir Kumar, AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
CAV JUDGMENT

Date: 13 -01-2016

The petitioner has filed the present writ petition under Article 226 of the Constitution of India with a prayer for quashing the enquiry report dated 05.07.2005, as contained in Annexure-25/A, as also the consequential order contained in Memo No.4879 Patna, dated 03.12.2005, issued under the signature of the respondent Joint Secretary, Department of Minor Irrigation, Government of Bihar, Patna, as contained in Annexure-30, whereby the petitioner has been visited with the punishment of dismissal from service on the basis of findings recorded in the aforesaid enquiry report (Annexure-25/A) and it has been held that nothing more shall be payable to the petitioner excepting the subsistence allowance already paid to him during the period of suspension. The petitioner has also challenged the validity



and correctness of the order contained in Memo No. 3569/ Patna, dated 27.07.2006, issued under the signature of the respondent Deputy Secretary, Department of Minor Irrigation, Government of Bihar, Patna, as contained in Annexure-32, whereby the appeal preferred by the petitioner against the impugned order of punishment has been dismissed and the impugned order of punishment, as contained in Annexure-30, has been affirmed. Besides the above, the petitioner has further prayed for a direction for his re-instatement in service with all consequential benefits as also for payment of arrears of salary.

2. Shorn of unnecessary details, it would be sufficient to notice that while the petitioner was posted and working on his substantive post of Accounts Clerk, Minor Irrigation Sub-Division- I, Hajipur, he was assigned the charge of Divisional Cashier in addition to his own duty, by the respondent Executive Engineer, Minor Irrigation Division, Hajipur vide an office order dated 31.07.2003 (Annexure-1). Accordingly, the petitioner took over the charge of Divisional Cashier. However, only after about two months, the successor Executive Engineer (Respondent No.7) issued another office order dated 03.10.2003 (Annexure-2), whereby the previous office order dated 31.07.2003 (Annexure-1) was cancelled and the petitioner was directed to hand over the charge of Divisional Cashier to one Shri Bacha Singh.

3. It appears that in view of the aforesaid order dated 03.10.2003 (Annexure-2), some disputes arose. It is the case of the petitioner that Rs. 13,200/- was withdrawn/ received by the successor Executive Engineer on the basis of oral orders/ hand receipts, but that was not adjusted; therefore, the petitioner requested for adjustment of the aforesaid amount before he could have handed over the charge of the post of In-charge Divisional Cashier to the new incumbent.



However, it is the case of the respondents particularly the respondent Executive Engineer that despite repeated orders and directions issued by the competent authority, the petitioner did not hand over the charge of the post of In-charge Divisional Cashier, as a result of which the office work suffered and thereby the petitioner was guilty of negligence and indiscipline. It also appears that on account of aforesaid tussle, the petitioner was not paid his salary for certain period as he is alleged to have remained absent from duty during the said period.

4. In the above background, by an office order contained in Memo No. 860 dated 14.09.2004, issued under the signature of the respondent Chief Engineer (North), Minor Irrigation Department, Muzaffarpur, as contained in Annexure-13, the petitioner was put under suspension with immediate effect till conclusion of the departmental proceeding. During the period of suspension, his headquarter was fixed in the office of the Superintending Engineer, Minor Irrigation Circle, Darbhanga. Subsequently, the respondent Chief Engineer issued an order dated 29.09.2004 (Annexure-14), whereby it was directed that the departmental proceeding shall be conducted against the petitioner under the provisions of Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930, read with the provisions of The Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935. The Superintending Engineer, Minor Irrigation Circle, Darbhanga was appointed as the Enquiry Officer and the respondent Executive Engineer, Minor Irrigation Division, Hajipur was appointed as the Presenting Officer. Thereafter, by a letter dated 13.10.2004, issued by the respondent Executive Engineer, as contained in Annexure-15, the petitioner was served upon a copy of memo of charges dated 06.10.2004.



5. It has been pleaded in the writ petition that the petitioner asked for certain documents for filing his explanation to the memo of charges, but those documents were not supplied to him, yet he submitted his explanation on 07.05.2005 (Annexure-24) to the Enquiry Officer denying the articles of charges against him and pleaded that he may be exonerated from all the charges, as those charges were unfounded and were on account of the malice of the then Executive Engineer, Minor Irrigation Division, Hajipur, namely, Shri Mahendra Poddar. As noticed above, subsequently, the impugned enquiry report dated 05.07.2005 (Annexure-25/A) was submitted, on the basis of which the petitioner has been visited with the punishment of dismissal from service by the impugned order dated 03.12.2005 (Annexure-30). The appeal preferred by the petitioner was also rejected by the impugned appellate order dated 27.07.2006 (Annexure-32). Hence, the present writ petition.

6. The learned Senior Counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned order of punishment, as contained in Annexure-30, which is on the basis of the impugned enquiry report, as contained in Annexure-25/A, submitted that in the present case though a departmental proceeding was initiated against the petitioner for certain charges, but, in fact, no enquiry, at all, was conducted, rather it is a case of no evidence. According to him, on plain perusal of the impugned enquiry report (Annexure-25/A), it is apparent that the Enquiry Officer visited the Divisional office on 09.06.2005, and on the basis of oral statement of certain employees present there, he recorded his conclusion holding the petitioner guilty for almost all the charges. It was further submitted that it was a bizarre enquiry report submitted by the Enquiry Officer, though, in fact, no enquiry was



conducted by him and no witness was produced on behalf of the department in support of the charges levelled against the petitioner. It was next contended that there was no semblance of enquiry, which is required to be conducted in a departmental proceeding, and the petitioner was not given any opportunity either to cross-examine the witnesses or to defend himself. It was pointed out that no date as such was fixed by the Enquiry Officer for examination of witnesses and production of materials/ evidence either in support of the article of charges or in support of the defence of the delinquent. It was highlighted that on the face of it, it is apparent that the impugned enquiry report was prepared jointly by the Presenting Officer i.e. the respondent Executive Engineer, who was the prosecutor and the enquiry officer, which, according to him, is not permissible under the service jurisprudence. It was further highlighted by the learned Senior Counsel that the respondent Chief Engineer was the disciplinary authority of the petitioner, but the impugned order of punishment was passed by the respondent Joint Secretary, representing the State Government i.e. the appellate authority. It was contended that though the Deputy Secretary happens to be subordinate to the Joint Secretary in the administrative hierarchy of a department of the government, but quite surprisingly, the order of punishment was passed by the respondent Joint Secretary and the appeal preferred by the petitioner was dismissed by a subordinate to him in the administrative hierarchy i.e. the respondent Deputy Secretary. Therefore, according to him, the whole proceeding has vitiated, as a result of which the impugned enquiry report, as contained in Annexure-25/A, the impugned order of punishment, as contained in Annexure-30, and the impugned appellate order, as contained in Annexure-32 are fit to be set aside and quashed by this Court and the petitioner is entitled to be re-instated in

service with all consequential benefits and back wages. In support of his above contention, he has placed reliance on the judgments of the Hon'ble Apex Court in the cases of **Union of India vs. H.C. Goel** [AIR 1964 SC 364] (Paragraphs-, 1,10, 20 and 22), **Kuldeep Singh vs. Commissioner of Police** [(1999) 2 SCC-10] (Paragraphs- 6,8, 9, 27, 32, 34 and 42), and **Roop Singh Negi vs. Punjab National Bank** [(2009)2 SCC 571] (Paragraph-23).

7. Per contra, learned Additional Advocate General-2 appearing on behalf of the respondents, by referring to the averments made in the counter-affidavit filed on behalf of the respondent no. 2 to 7, has supported the impugned enquiry report (Annexure-25/A), the impugned order of punishment, as contained in Annexure-30, and the impugned appellate order, as contained in Annexure-32. According to him, charges against the petitioner were serious in nature, but those charges are based on documentary evidence, therefore, no witness was required to be produced on behalf of the department. It was submitted that on the basis of documentary evidence, the charges against the petitioner were found to have been proved by the Enquiry Officer and, accordingly, enquiry report, as contained in Annexure-25/A, was submitted, a copy of which was forwarded to the petitioner and after consideration of his second show cause/ explanation, the impugned order of punishment was passed dismissing him from service. It was contended that against the impugned order of punishment, though the petitioner did not file any appeal, but the representation filed by him to the Chief Minister was treated as an appeal, and in view of gravity of charges, the appeal preferred by the petitioner was rejected by the impugned order dated 27.07.2006 (Annexure-32). According to him, the orders impugned cannot be legally faulted and, therefore, the writ petition is liable to be dismissed by this Court. In support of his above

contentions, he has also placed reliance on the judgments of the Hon'ble Apex Court in the cases of **Union of India vs. H.C. Goel** (Supra) (*paragraphs-2,3,4 and 20 to 28*) and **Kuldeep Singh vs. Commissioner of Police** (supra) (*Paragraphs-6, 12, 25, 29 and 32*).

8. After having heard the parties at great length and on consideration of the materials available on record, this Court finds that in view of certain charges against the petitioner, he was put under suspension by an order dated 14.09.2004 (Annexure-13), till conclusion of the departmental proceeding. By an order dated 29.09.2004 issued by the respondent Chief Engineer, as contained in Annexure-14, a departmental proceeding was initiated against the petitioner. The Superintending Engineer, Minor Irrigation Circle, Darbhanga, was appointed as the conducting officer of the departmental enquiry and the respondent Executive Engineer, Minor Irrigation Division, Hajipur was appointed as the presenting officer. A memorandum of charges dated 06.10.2004 was communicated to the petitioner by letter dated 13.10.2004 (Annexure-15) issued by the presenting officer and not by the enquiry officer. Thereafter, the petitioner submitted his explanation/ show cause on 07.05.2005 (Annexure-24) denying the charges levelled against him and pleaded for his exoneration from all the charges. No material has been produced by the respondents to show that any firm date was fixed for conducting enquiry by the enquiry officer. However, it appears that on 09.06.2005, the enquiry officer visited the Minor Irrigation Division, Hajipur and took the oral statement of the employees present there. It does not appear that any prior information was given to the delinquent-petitioner by the enquiry officer for visiting the Divisional Office, Hajipur for examining employees present there, as witnesses, though, admittedly, headquarter of the petitioner was fixed at



Darbhanga. It is apparent that oral statements of those employees were recorded behind the back of the petitioner. No opportunity was given to the petitioner to cross-examine those employees. Oral statement of employees allegedly recorded by the enquiry officer has also not been brought on record, despite orders and directions issued by this Court by order dated 13.03.2014 as also 07.04.2014 passed by a Bench of this Court. Even the Executive Engineer, namely, Shri Mahendra Poddar, against whom the petitioner has levelled serious charge of receiving Rs. 13,200/- un-authorisedly from him, was not examined on behalf of the department to deny such allegation of the petitioner.

9. Evidently, no date was fixed by the enquiry officer for production of witnesses/ materials in support of his defence in the aforesaid departmental enquiry. Strangely, the enquiry report dated 05.07.2005, as contained in Annexure-25/A was prepared under the joint signature of the enquiry officer as also the presenting officer. Furthermore, while preparing the aforesaid enquiry report, the enquiry officer does not appear to have applied his independent judicial mind to the facts of the case before coming to any particular conclusion regarding article of charges. The conclusion of the enquiry officer is on a separate sheet of paper and defence of the delinquent are on altogether different sheets of papers. This was really a bizarre enquiry report, de-hors of well established procedure for holding departmental enquiry. The enquiry officer ought to have taken into consideration the charges against the petitioner, defence produced by him, materials collected during the course of departmental enquiry and only thereafter, he could have recorded his own conclusion, but that does not seem to have been done in the present case. The manner in which the departmental proceeding was conducted does not inspire

confidence in its propriety and genuineness.

10. It is true that departmental proceeding vis-à-vis a criminal trial cannot be tested on the same touch stone. In a criminal trial charges are required to be proved beyond all reasonable shadow of doubts, whereas in the departmental proceeding, probability of charges are required to be found, but there must be some semblance of proper enquiry conducted by the enquiry officer after giving reasonable opportunity to the delinquent to cross-examine the witnesses of the department and produce his witness/ material in support of his defence, but that simply has not been done in the present case. Therefore, the whole procedure followed by the enquiry officer has vitiated in law.

11. Furthermore, the petitioner, being subordinate/ non-gazetted employee, the Chief Engineer was the disciplinary authority, but in the present case, the impugned order of punishment has not been passed by the disciplinary authority, rather by the State Government. Thereby the petitioner has been deprived of inviolable right to appeal against the order of punishment, had it been passed by the disciplinary authority. This is not the end of the matter. The order of punishment was passed by the respondent Joint Secretary, which is higher in administrative echelon than the respondent Deputy Secretary. The appeal preferred by the petitioner has been rejected by the respondent Deputy Secretary, which is certainly lower in administrative echelon than the respondent Joint Secretary. Therefore, the impugned appellate order is also vitiated on that ground alone.

12. For the reasons recorded above, this Court is of the considered opinion that entire matter requires reconsideration and fresh decision. The departmental enquiry is required to be conducted afresh from the stage of service of memo of charges by fixing a firm



date for holding departmental enquiry and by giving opportunity to the department as also the petitioner to produce their witnesses/materials in support of their respective cases. Consequently, the impugned enquiry report dated 05.07.2005, as contained in Annexure-25/A, the impugned order of punishment passed by the respondent Joint Secretary, Department of Minor Irrigation, Government of Bihar, Patna, as contained in Annexure-30, and the impugned appellate order passed by the respondent Deputy Secretary, Department of Minor Irrigation, Government of Bihar, Patna, as contained in Annexure-32, are hereby set aside and quashed. Now, the respondent Chief Engineer (North), Minor Irrigation Department, Muzaffarpur (respondent no.5) shall forward the relevant documents to the Superintending Engineer, Minor Irrigation Circle, Darbhanga, with a request to conduct a fresh departmental enquiry and conclude it within a reasonable period of time.

13. In view of setting aside the order of punishment, the petitioner shall stand re-instated on his substantive post of Accounts Clerk, if not reached the age of superannuation, and he shall be deemed to be under suspension till conclusion of the fresh departmental enquiry. He shall be paid his subsistence allowance till the conclusion of the fresh departmental proceeding. However, the consequential benefits including arrears of salary etc. for the interregnum period since the date of his dismissal from service and the present order shall be dependent upon the conclusion of the fresh departmental enquiry and the order passed by the disciplinary authority. However, if the petitioner has reached the age of superannuation on account of passage of time, then he shall be retained in service by passing appropriate order by the competent authority by exercising powers under Rule 73 of The Bihar Service

Code, 1952, so that relationship of master and servant continues between the petitioner and the State Government.

14. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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