

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8589 of 2014

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1. Ram Tawakal Singh son of Late Nandu Singh Resident of village- Moap Kalan, PS- Imadpur, District- Ara (Bhojpur)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Special Secretary, Government of Bihar, Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Additional Department Enquiry Commissioner, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Nath Dubey

For the Respondent/s : Mr. Gp31- Smt. Binita Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

6 23-11-2017 Heard both sides.

The petitioner seeks quashing of the Notification No.351 dated 15.03.2013 issued under the signature of Special Secretary, Water Resources Department by which 40% pension of the petitioner has been withheld for ten years(Annexure-7). The petitioner further prays for consequential relief and payment of entire pension.

The brief fact relevant for disposal of this writ petition is that while the petitioner was posted as Executive Engineer, Jal Path Pramandal, Jehanabad, some works were done for widening



and strengthening the jamindari embankment of Dardha river. The petitioner retired on 30.06.2008. Petitioner received a letter on 05.11.2009 along with the inquiry report of the Technical Examiner Cell(Annexure 1). The petitioner submitted his show cause on 28.11.2009 and stated that the Vigilance Committee did not measure the work done in accordance with law and no leveling instrument was used for measurement of the work but the departmental inquiry was initiated. The petitioner appeared before the Inquiry Officer and submitted his reply on 31.07.2011. The Presenting Officer did not produce any material before the Inquiry Officer in accordance with the procedure as laid down under sub-rule(14) of Rule 17 but the Inquiry Officer relying on the preliminary inquiry made by the Vigilance Cell of the Water Resources Department found the petitioner partially guilty on some of the charges. Deputy Secretary, Irrigation Department asked second show cause from the petitioner. The petitioner submitted his exhaustive show cause on 31.07.2011, Annexure-6 but the disciplinary authority without considering the show cause of the petitioner withholding 40% pension of the petitioner.

Mr. Ravindra Nath Dubey, the learned counsel appearing on behalf of the petitioner assailed the order of withholding 40% of the pension of the petitioner on the ground



that the proceeding under Rule 43(b) of the Pension Rules was initiated but no loss was caused to the Department. The Vigilance Cell reported vide Annexure-1 itself that the work was in progress and no final bill submitted for payment after completion of the work. The learned counsel for the petitioner further submits that the Inquiry Officer heard the petitioner and the Presenting Officer but the Presenting Officer did not produce any document in accordance with law as should have been produced during the inquiry under sub-rule(14) of Rule 17 of C.C.A. Rules, 2005 and, therefore, the inquiry report is based on no evidence.

On the contrary, the learned counsel for the State also filed supplementary counter-affidavit but did not specifically stated anywhere that during the course of inquiry, the Presenting Officer as per the requirement of sub-rule (14) of Rule 17 produced the documentary evidence but stated that the inquiry report is based on documentary evidence.

Having heard the submission of both sides, the sole question arises for consideration as to whether the report of the Inquiry Officer without being produced any evidence by the Presenting Officer as required under sub-rule(14) of Rule 17, on perusal of the records not brought on record in accordance with law is legal and any punishment can be inflicted on such report?



It is important to reproduce sub-rule (14) of Rule 17 which is as follows:

“(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

From bare perusal of sub-rule(14) and different sub-rules of Rule 17, it is crystal clear that the legislature has prescribed the procedures for holding departmental inquiry in the prescribed manner. It is needless to say that violations of the procedure meant for holding departmental proceeding amounts to violation of natural justice and if inquiry is held in contravention of any provisions of Rule 17 meant for holding departmental inquiry, the inquiry report as well as the punishment thereon shall be vitiated. It is evident that the proceeding was initiated on the basis of the inquiry report of Technical Committee of the Vigilance Department. The petitioner was served with the article of charge containing six charges on the basis of the inquiry report



of the Technical Committee. The petitioner submitted his detailed show cause but the disciplinary authority did not satisfy with the show cause of the petitioner and ordered for initiation of a proceeding under Rule 43(b) of the Bihar Pension Rules. The disciplinary authority appointed Additional Inquiry Commissioner to hold the inquiry. The inquiry report(Annexure-5) shows that the Inquiry Officer considered the show cause and the submissions of the Presenting Officer but it does not appear that the Presenting Officer during the course of inquiry brought on record any documentary evidence in accordance with law as required under sub-rule(14) of Rule 17. The Presenting Officer is bound to bring on any document in accordance with law and that should have been marked as exhibit. Without bringing the documents on record in accordance with law, the same cannot be treated as legal evidence. It further appears that the Presenting Officer did not even examine the member of the Committee who held preliminary inquiry on the basis of which the proceeding under Rule 43(b) of the Pension Rules was initiated against the petitioner. Unless the author of the report is examined and petitioner was allowed to cross-examine, the author of the report on the basis of which the proceeding was initiated, the finding of the Inquiry Officer with regard to guilt and punishment on such report by the disciplinary



authority in my view is absolutely illegal and not sustainable.

Having considered the facts aforesaid, I find that the order dated 15.03.2013, as contained in Notification No.351, is illegal and accordingly, it is set aside. The writ petition is allowed. The respondents are directed to pay the entire arrears of pension to the petitioner within two months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

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