

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3798 of 2016

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Hanuman Prasad Choudhary S/o Late Sabha Kant Choudhary, R/o Flat No. 302,
Bhawani Palace, Anadpuri, Off West Boring Canal Road, P.S. S.K. Puri, Town &
District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Deputy Secretary (Vigilance), Road Construction Department, Govt. of Bihar, Patna.
4. The Bihar Rajya Pul Nirman Nigam Limited, Patna through its Chairman.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr.Adv.
Mr.Purushottam Kumar Jha, Adv.
For the Respondent/s : Mr. Anil Kumar Sinha, GA-1
For BRPNNL : Mr. Rabindra Kumar Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-07-2017

Heard Mr. Y.V.Giri, learned Senior Counsel appearing for the petitioner alongwith Mr. Purushottam Kumar Jha, Advocate on record, Mr. Anil Kumar Sinha, learned GA-1, for the State, who appears with Mr. Ravish Kumar, AC to GA-1 and Mr. Rabindra Kumar Priyadarshi, learned counsel appearing for the Bihar Rajya Pul Nirman Nigam Limited, Patna.

The writ petition was initially filed questioning the order of suspension bearing Notification No. 9995(s) dated 16.10.2014 passed by the State Government in its Road Construction Department,



impugned at Annexure 6 to the writ petition. The petitioner alongside prayed for a direction to the respondent authorities to exonerate the petitioner of the charges levelled against him vide Annexure 7/1 to the writ petition in view of the report so submitted by the Conducting Officer, a copy of which was enclosed at Annexure 9 to the writ petition. Since it is during the pendency of the matter that the final order was passed against the petitioner in the departmental proceedings bearing Memo No. 4264 dated 15.6.2016, a copy of which was impugned at Annexure 13 to I.A.No. 5540/2016, that on leave being sought by the petitioner, he was permitted to question the punishment order whereby his two annual increments were withheld with non-cumulative effect. Alongside it was further ordered that the petitioner would not be entitled to any pay and allowances for the suspension period other than the subsistence allowance received by him. A review application filed by the petitioner has again been rejected by the State Government in its Road Construction Department vide Memo No. 2819(s) dated 24.3.2017 which has been placed on record vide Annexure 20 to I.A.No. 2535/2017 and on leave so prayed by the petitioner to question the same, is again allowed.

Interlocutory applications bearing I.A.No. 5540/2016 and I.A.No. 2535/2017 are accordingly allowed.

The facts leading to the impugned order briefly stated is that



the bridge constructed on the Runnisaidpur- Katra- Keotsa Road at 26.15 K.M. situated in the district of Muzaffarpur got damaged and since the enquiry so held under the supervision of the Managing Director of the Corporation, indicted the petitioner also, that he was suspended vide order bearing Memo No. 9996 dated 16.10.2014 and which was followed by a resolution of the State Government initiating departmental proceedings against the petitioner under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') vide resolution bearing Memo No. 11246(s) dated 25.11.2014 placed at Annexure 7. The resolution accompanied a charge memo, a copy of which has been placed at Annexure 7/1 to the writ petition. The petitioner responded by denying the charge and in the enquiry so held by the Commissioner, Departmental Enquiry, the explanation given by the petitioner was accepted and the Enquiry Officer vide his report placed at Annexure 9 exonerated the petitioner of the sole charge. The petitioner was served with a second show cause notice on the report vide Annexure 14 to I.A.No. 5540/2016 containing the notes of disagreement and which was responded to by the petitioner vide Annexure 17 but has resulted in the order of penalty bearing Memo No. 4264 dated 15.6.2016 impugned at Annexure 13 which has been confirmed when the review application has been rejected by the



disciplinary authority of the petitioner vide Memo No. 2819 dated 24.3.2017 impugned at Annexure 20 to I.A.No. 2535/2017. Feeling aggrieved he is before this Court.

While it is the argument of Mr. Giri, learned Senior Counsel appearing for the petitioner, that the charge levelled against the petitioner even if taken on its face value, does not constitute a misconduct, he further in reference to Annexures 1, 2, 3 and 16 submits that a plain reading of the expression found in these documents, itself exonerates the petitioner of all the allegations. He submits that though four Engineers were held to be responsible for the construction work but since the petitioner was nowhere associated with the construction of the bridge in question, no onus could be cast upon him. He further submits that the entire responsibility of preparing Detailed Project Report ('DPR' for the sake brevity) is on the authorities of the IIT and Consultants which is admitted by the respondents themselves and thus, if the 'DPR' was lacking on technical specification, it is the person connected therewith who had to accept the blame and not the petitioner. Mr. Giri has further in reference to the second show cause notice submitted that it nowhere contains the notes of disagreement rather it is a mere opinion of the disciplinary authority without giving the tentative reasons for disagreement. He further submits that the order of penalty again



nowhere discusses materials connecting the petitioner with the alleged charge rather the note of the Chief Secretary contained in the disagreement note at Annexure 14, itself is resting on mere speculation and which cannot be the foundation for a misconduct.

The arguments of Mr. Giri has been contested by Mr. Sinha, learned GA-1, and whose main plank of contest lies on the association of the petitioner with the bridge and to submit that since he was Senior Bridge Engineer at the relevant time he cannot shy away from the responsibility. He submits that the DPR was prepared by the agencies and not the petitioner but it was a part of his duty to examine the DPR before he forwarded the same.

I have heard learned counsel for the parties and have perused the records and in the nature of the contest in hand, I do not intend to enter into an exhaustive discussion to hold that the entire proceedings have been held in gross violation of the statutory rules. In fact even the charge memo placed at Annexure 7/1 neither satisfies to the statutory prescriptions present at Rule 17(3) of 'the Disciplinary Rules' which obliges the disciplinary authority to follow certain essential steps. The allegations present in the charge memo even if accepted on its face value do not make out any misconduct against the petitioner. The charge memo is lacking on statutory prescriptions as mandated under Rule 17(3) and is absolutely vague for neither it



contains the substance of imputation of misconduct or misbehaviour as a definite article of charge nor there is a statement of imputation of misconduct or misbehaviour in support of such article of charge. In fact there is no article of charge at all present in the memo of charge which simply refers to the report given by the Bihar State Bridge Construction Corporation Limited bearing letter no. 2658 dated 10.9.2014 for holding the petitioner guilty for violation of the Bihar Government Servants Conduct Rules, 1976. The disciplinary authority has failed in his statutory duty in drawing proper charge against the petitioner which as I have already held, neither satisfies the statutory prescriptions nor makes out a misconduct against the petitioner. The foundation itself being removed, the structure built thereon has to collapse and as a consequence the entire proceeding is held to be bad.

Although I would have stopped here to conclude my order on the default itself but I deem it necessary to remind the disciplinary authority of the obligation cast upon him under the provisions of Rules 17 and 18 of 'the Disciplinary Rules' which require to be strictly followed for any violation of the procedure, is not condonable. It is not on a simple drawing of a charge memo as mandated under Rule 17(3) that a proceeding is to commence rather it is only after the disciplinary authority records a satisfaction after hearing the delinquent on the charge as mandated under Rule 17(4) that he is



empowered to take decision under Rule 17(5) whether or not to draw a formal proceeding but until such procedure is followed, the disciplinary authority cannot take recourse to a proceeding straightway in contravention of the lawful procedure.

Law is well settled that a vague charge memo found wanting not only on the statutory procedure but also on merits, cannot be a foundation for a valid proceeding and reference in this regard is made to the judgment of the Supreme Court since reported in **(1970)3 SCC 548 (Sarath Chandra Chakarbarty v. State of West Bengal)**. The Enquiry Officer having examined the materials supporting the charge whatsoever, found no reasons to uphold the same. The disagreement note present at Annexure 14 is a hypothetical expression of the Chief Secretary which does not rest on a valid reason nor rests on a material evidence. As I have held, the proceeding is a bundle of statutory violations and also does not withstand the test on merits.

For the reasons and discussions above, the entire proceedings initiated against the petitioner vide charge memo at Annexure 7, the disagreement note at Annexure 15, the order of penalty at Annexure 13 as well as the order of review at Annexure 20 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with the consequential reliefs to which the petitioner is found entitled. The discretion and choice is



entirely on the disciplinary authority whether or not to proceed against the petitioner but in case he does so, it should be done in accordance with law.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.08.2017
Transmission Date	NA

