

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9459 of 2011

Mahendra Chaudhary, son of late Mohit Chaudhary, resident of Mohalla-
Brahmpura (behind Sanjay Cinema), Police Station- Brahmpura, District-
Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Water Resources Department,
Government of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Government of Bihar,
Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar,
Patna.
5. The Engineer-in-Chief (North), Water Resources Department, Government
of Bihar, Patna.
6. The Chief Engineer, Balmiki Nagar, Water Resources Department,
District- West Champaran.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mallick, Advocate
For Accountant General : Mr. L.P.K. Rajgrihar, Standing Counsel

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 06-09-2017

Challenging the order dated 28.09.2005 passed by
the State Government imposing punishment of reduction of
pension by 25% and the order passed by the Appellate



Authority rejecting the appeal dated 06.04.2011 (Annexure-33), this writ petition has been filed by the petitioner.

Petitioner was posted as Chief Engineer in the Water Resources Department, Balmiki Nagar, West Champaran in the year 2002. It is alleged that he committed various irregularities and wilful negligence in the Flood Protection Work entrusted to him in the Afflux Bandh at Gandak barrage. As a result of petitioner's act of commission or omission, the barrage was breached on 23.07.2002 causing flood and consequential damage to public and private properties. On account of the aforesaid act of commission and omission, proceedings were held against the petitioner under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1950 and a charge-sheet was issued to the petitioner alleging 15 acts of commission and omission. Consequently, an Inquiry Officer was appointed and based on the evidence and material that came on record, the Inquiry Officer submitted his report on 31.07.2004 exonerating the petitioner of 12 charges levelled against him but concluded that Charge Nos. 2 and 14 were proved and Charge No. 5 was partly proved. The Disciplinary Authority on receipt of the Inquiry Report disagreed with the finding of the Inquiry Officer on six grounds and, therefore,



vide Annexure-26 on 21.06.2005 communicated to the petitioner the six grounds of disagreement, the report of the Inquiry Officer and directed the petitioner to give his say in the matter. The petitioner vide Annexure-28 submitted his detailed explanation to the aforesaid show-cause on 01.07.2005 and contended that the finding of the Inquiry Officer was proper and the same did not warrant any reconsideration. However, the Disciplinary Authority did not accept the contention of the petitioner and by the impugned order Annexure-29 dated 28.09.2005 imposed the punishment in question. Appeal filed having been rejected, this writ petition has been filed.

Learned counsel appearing for the petitioner took me through the documents and other materials available on record and argued that once the Inquiry Officer has exonerated the applicant of the charges levelled against him, the Disciplinary Authority could disagree with the same by considering the explanation and defence of the petitioner and after recording reasons for the same. He invites my attention to Annexure-29, the impugned order passed holding the petitioner guilty of the charges and argues that no reason has been given as to why the finding of the Inquiry Officer is not proper. There is no consideration of the explanation given by the petitioner



vide Annexure-28 and in an illegal and perverse manner the findings have been recorded. Learned counsel submits that this submission is enough to vitiate the entire proceedings held against him.

Even though the learned counsel for the respondents have supported the claim of the department but a perusal of the documents that have come on record, it is clear that the Inquiry Officer in his report submitted, as is evident from Annexure-27, exonerated the petitioner of most of the charges but only found Charge Nos. 2 and 14 to be proved and Charge No. 5 partly proved. However, the Disciplinary Authority vide show-cause Annexure-26 dated 21.06.2005 communicated to the petitioner six reasons on the basis of which it was the opinion of the Disciplinary Authority that the report of the Inquiry Officer cannot be accepted and the Disciplinary Authority thought it appropriate to differ from the finding of the Inquiry Officer and record his own finding and, therefore, when the show-cause notice was issued to the petitioner communicating to him the six reasons as to why the Disciplinary Authority proposes to differ from the finding of the Inquiry Officer, petitioner submitted a detailed representation and explanation to the same running to more than 30 pages and



gave his submissions. However, the Disciplinary Authority in a very casual manner without considering the explanation of the petitioner, without advertent to take note of his defence and without recording a finding as to how and on what basis the 13 charges of which the petitioner was exonerated are proved, passed the impugned order Annexure-29 dated 28.09.2005. If the manner in which the Disciplinary Authority recorded his finding of difference and recorded a finding of guilt taking a different view from the Inquiry Officer, as is recorded in Annexure-29, is taken note of, it would be seen that this is an order which is a one page order and in Paragraph 1 the particulars of the departmental proceedings initiated against the petitioner and the particulars of the charge-sheet issued to him are indicated, thereafter the show-cause notice issued to the petitioner and the six points of disagreement are indicated. Finally in the last paragraph it is said that the explanation of the petitioner to the show-cause notice dated 21.06.2005 is considered, it is rejected and the punishment is recorded.

This Court is constrained to hold that the manner in which the Disciplinary Authority has recorded the finding and imposed the punishment is not permissible under law. When the Inquiry Officer has exonerated the petitioner of the



charges levelled, particularly the 13 charges, if the Disciplinary Authority wanted to disagree from the finding and record his own finding, it was incumbent upon the Disciplinary Authority to take note of the points of disagreement, the explanation submitted by the petitioner, evaluate the explanation in the backdrop of the finding recorded by the Inquiry Officer, discuss the same, give reasons for disagreement and then record his independent finding. All these legal requirements are not adhered to by the Disciplinary Authority and in a one paragraph order it is only stated that the explanation of the petitioner is unsatisfactory, it cannot be accepted and rejecting the Inquiry Officer's report it is only stated that the charges are proved and the punishment imposed. This does not meet the requirement of law and as the Disciplinary Authority has recorded a finding of guilt against the petitioner without following the requirement of law in a perverse manner, showing total non-application of mind, has acted in a mechanical manner, and has recorded a finding of guilt by issuing a non-speaking order, this is enough to interfere into the matter, hold the action to be vitiated and allow this petition.

Accordingly, this writ petition is allowed the order Annexure-29 dated 28.09.2005 and the appellate order



dated 06.04.2011 (Annexure-33) are quashed. The writ petition stands allowed and disposed of. Petitioner shall be entitled to consequential benefit in view of the aforesaid.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	11.09.2017
Transmission Date	

