

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1044 of 2015

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Ajay Kumar Singh Son of Sri Vijay Pratap Singh Resident of village & P.O. Chilh,
District - Mirzapur (U.P.) Pin Code 23131, At Present Residing at Flat No. 301,
Dev Sharan Griham Apartment, Vijay Nagar, Bailey Road, Patna 80001 (Bihar)

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna
2. Principal Secretary, Road Construction Department, Visheshwaria Bhawan, Bailey Road, Patna (Bihar)
3. Chief Engineer - Cum - Enquiry Officer, South Bihar, Road Construction Department, Visheshwaria Bhawan, Bailey Road, Patna (Bihar)
4. Chief Engineer (Mechanical) Mechanical Wing, Road Construction Department, Visheshwaria Bhawan, Bailey Road, Patna (Bihar)
5. Superintending Engineer (Mechanical), N.H. Mechanical Circle, Visheshwaria Bhawan, Bailey Road, Patna (Bihar)
6. Deputy Secretary (Vigilance), Road Construction Department, Visheshwaria Bhawan, Bailey Road, Patna (Bihar)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.

Mr. Santosh Kumar Mishra, Adv.

For the Respondent/s : Mr. Shashi Shekhar Tiwari, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-02-2017

Heard Mr. Raju Giri, learned counsel appearing for the
petitioner and Mr. Shashi Shekhar Tiwari, AC to AAG-15, for the
State.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The petitioner prays for issuance of a writ in the nature of
certiorari for quashing the notification bearing Memo No. 8176 dated
27.8.2014 of the State Government in its Road Construction
Department, whereby the petitioner has been reverted permanently to



basic scale. A copy of the notification is impugned at Annexure 35 to the writ petition. The petitioner filed an application for review and which also has been rejected vide notification dated 24.11.2014 impugned at Annexure 37.

The charge sheet, which is the foundation for the proceeding in question, is impugned at Annexure 25 and four charges have been set up against the petitioner for drawing the proceedings, who holds the post of an Executive Engineer (Mechanical) in the Road Construction Department of the State Government.

Charge No.1 charges the petitioner of making arrangement for ensuring security of the seized machineries of M/s Tantia Construction Company by the Chaukidars appointed on daily wages. According to the charge the petitioner should have acted in the light of the directions issued by the Superintending Engineer, Kendriya Nirupan Anchal, Road Construction Department, bearing letter No. 4418 dated 4.12.2008.

Charge No.2 alleges that on inspection done by the Chief Engineer (Mechanical) alongwith his Secretary on 26.3.2011 to inspect the security of the seized goods, the Chaukidars on duty did not match the names given by the petitioner, rather the person present there, a retired Captain B.P.Singh informed that the security work is being done by the Guards appointed by M/s Tantia Construction themselves and who are also making their payment. On query, one of



the Chaukidars gave his name as Arjun Singh but according to the list given by the petitioner it is Deepu Kumar and Bhrigunath who should have been on duty. It is further the allegation that on 29.3.2011 as well, none of the Chaukidars present match the list given by the petitioner.

Charge No.3 charges the petitioner of attempted defalcation.

The petitioner filed his reply, a copy of which is present at Annexure 26, clarifying the position and informing that posting of the Chaukidars is in the light of permission granted by the Chief Engineer himself, copies of which is annexed at Annexures 1 to 4 and it was informed that in absence of timely release of funds the Chaukidars were not willing to serve after 31.3.2011. Mr. Giri has referred to the permission granted by the Superintending Engineer granting permission as contained in Annexures 2 to 4 and refers to Annexure 22 which is a letter dated 25.3.2011 to submit that while the petitioner is being charged on defalcation but by the said letter a sum of over two lacs was refunded by the petitioner on its non-utilization.

The enquiry report is enclosed at Annexure 32 and which is exhaustive and upholds the three charges against the petitioner of not ensuring compliance of the order of the Superior Officer; for applying pressure for obtaining incorrect approval for the daily wages Chaukdars; and for alleged attempt to defalcate.

It is following the enquiry report that a second show cause



notice was issued to the petitioner and which has culminated in the order of penalty impugned at Annexure 35.

The short submission made by Mr. Raju Giri, learned counsel for the petitioner, to question the order of penalty impugned at Annexure 35 and its affirmance by dismissal of the appeal impugned at Annexure 37 is that it is resting on no evidence for even when the charges levelled against the petitioner is rather serious and alleges disobedience of the orders of the superior by engaging labourers in violation of the Departmental Advisory but neither any oral evidence was led by the department to prove such charge nor documentary evidence was led to support the charge of attempted defalcation. Learned counsel has again made reference to the permission orders which are enclosed to the writ petition to submit that each engagement was following the permission so granted and every money allotted has been duly accounted for. He submits that though several names have been mentioned in the charge sheet, which is resting on two enquiry reports conducted on 28.3.2011 and 30.3.2011 present at Annexures 23 and 24 respectively but none of these persons have been examined in the enquiry.

Learned counsel relying upon the judgment of the Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank and ors.**, reported in (2009)2 SCC 570, with particular reference to paragraphs 12 to 23 of the judgment, submits that the judgment



applies with all force to the case in hand.

The argument of Mr. Giri has been contested by Mr. Tiwari, learned State Counsel. He submits that the scope for intervention in such proceeding is very limited. Learned Counsel in reference to the judgment of the Supreme Court reported in 2016(1) PLJR 461 (SC) **(Prem Nath Bali v. Registrar, High Court of Delhi & Anr.)** and 2016(2) PLJR 895 (D.B.) **(Sujit Kumar v. Union of India & ors.)** submits that strict rules of evidence do not apply in the departmental proceeding and even if there is some evidence to demonstrate a misconduct then there cannot be an examination as to its sufficiency. He further submits that since no such objection was raised by the petitioner, it has not been commented upon.

I have heard learned counsel for the parties and have perused the records.

While the argument of Mr. Giri rests on the issue that the enquiry report as well as finding by the disciplinary authority rests on no evidence, a rather peculiar argument has been advanced by Mr. Tiwari that had these objections been raised at the enquiry level, the matter could have been different. It is not for the delinquent to advise the department on the procedure rather once a decision is taken to initiate a proceeding against a delinquent then unless fully armed with materials to support the charge, the department should refrain from such adventurism which ends in a frivolous proceedings. It is again



not a delinquent's job to point out the lacuna in a proceeding rather it is for the disciplinary authority to satisfy himself whether or not the matter requires an enquiry and whether there are materials to support the charge. What Mr. Tiwari argues is shifting the burden on the delinquent. A job to be done by the disciplinary authority can not be shifted to the delinquent, to generate evidence against himself. There is no dispute on the principles underlying a disciplinary enquiry regarding sufficiency of evidence but then there has to be some evidence to connect the delinquent with the charge. A delinquent cannot be punished on mere allegation as having done in the present case.

The charges are rather serious as it reflects an attempt to defaulcate public money but then this charge requires some evidence to connect it with the delinquent, which is conspicuously absent in the present case. As argued by Mr. Giri and not contested by Mr. Tiwari, neither any oral nor any documentary evidence was led by the department to drive home the charge. The judgment of the Supreme Court in **Roop Singh Negi** (supra) relied upon by Mr. Giri, discusses all issues as advanced by him and taken note of hereinabove. This is neither the first case nor will be the last where though the department decides to initiate a proceeding but it either does not do its home work or such proceeding is drawn half heartedly.

In so far as the case in hand is concerned, the position is



undisputed where no evidence was led by the department to drive home the charge. In the uncontested position so discussed, the enquiry report is incapable of being upheld as the opinion is resting on no evidence and this illegality has been perpetuated by the disciplinary authority to mechanically endorse the opinion. The order of the disciplinary authority besides bearing no discussion on evidence, takes no note of the defence led by the petitioner. Plainly speaking the order of the disciplinary authority is, non-descript mechanical and suffers non-application of mind.

For the reasons so discussed, the punishment order bearing Memo No. 8176 dated 27.8.2014, impugned at Annexure 35, together with the order of review dated 24.11.2014, impugned at Annexure 37, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with consequential reliefs.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2017
Transmission Date	NA

