

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10607 of 2014

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Bijay Kumar Sinha S/o Late Lakshmi Prasad Sinha Resident of E/4, Savitri Sadan,
Sadhanapuri, Gardanibagh, P.S. Gardanibagh, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
For the State : Mr. M.K. Ambastha, SC 26
Mr. Subodh Kumar, AC to SC 26

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 05-12-2017

Heard counsel for the petitioner and the counsel for the State.

2. At the very outset the counsel for the State raises an objection regarding maintainability of the instant proceedings. He submits that the petitioner has not approached this Court with clean hands as he has not placed on record of the writ petition, the materials which have been collected during enquiry in the criminal case. Keeping in view the gravity of charges as is evident from the FIR and the seizure list, this Court may not exercise its jurisdiction in favour of the petitioner.

3. The objection of the State as regards maintainability of



the instant proceedings are being noted only to be rejected. The materials collected during the enquiry in the criminal case is not relevant to the instant proceedings, inasmuch as the petitioner has confined his relief to the disciplinary proceedings and the criminal trial is not in question in the instant case.

4. Counsel for the petitioner has made very brief submission in respect of procedural lapses conducted during course of the proceedings initiated against him vide charge memo dated 24.04.2009. The Charge which is Praptra Ka is as follows :

“निगरानी अन्वेषण ब्यूरो के गठित जाँच दल द्वारा 3,12,632/—(तीन लाख बारह हजार छः सौ बतीस रुपये मात्र) नगद अवैध राशि के साथ दिनांक 20.2.2009 को आपको गिरफ्तार कर न्यायिक हिरासत में भजा गया है, इसके लिए आप प्रथम द्रष्टया दोषी पाये गये हैं।”

5. The petitioner was subjected to proceedings. He submitted his response and the Enquiry Officer submitted a report which is dated 06.08.2009. The report was to the extent that it is not possible to hold the petitioner's guilt in the proceedings till such time the vigilance and criminal case is pending before the Court.

6. It appears that subsequent thereto since the matter remained pending, the petitioner approached this Court for revocation of suspension. The writ petition filed by the petitioner bearing



C.W.J.C. No. 17941 of 2010 was allowed and the order of suspension of the petitioner was quashed. During course of the said proceedings it appears from Annexure 10 that a letter was issued by the Disciplinary Authority to the Enquiry Officer to submit a final report in respect of the pending proceedings so that an affidavit could be filed in the said writ proceedings. Pursuant thereto the Enquiry Officer has submitted his final report which is dated 24.01.2011 (Annexure-11).

7. From perusal of the enquiry report, it is quit obvious that the charges against the petitioner has not been proved in the disciplinary proceedings. Pursuant thereto the Disciplinary Authority issued a second show cause which is dated 17.05.2011 calling upon the petitioner to give his response but did not indicate reasons for disagreement.

8. Submission of the counsel for the petitioner is to the extent that while issuing the second show cause, the Disciplinary Authority has relied upon the evidence collected during the criminal trial which was being conducted against the petitioner. These materials were never supplied to him during course of enquiry and for the first time they have been relied upon by the Disciplinary Authority by issuing the second show cause. He alleges violation of Rules **17 (3) (ii) (b) and Rule 18(2) & (3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005** (hereinafter



referred to as 'the CCA Rule') inasmuch as all the relevant materials which are purported to be relied upon by the Disciplinary Authority have not been made available to him during enquiry before the Enquiry Officer and that he is prejudiced by such procedure adopted by the Disciplinary Authority as he has got no opportunity during enquiry. The procedure prescribed under the CCA Rules are there to ensure compliance with the Principles of Natural Justice as also to ensure that there is no infraction of Article 14 of the Constitution of India as the petitioner and others against whom proceedings are conducted, must be treated fairly and given an opportunity to establish his innocence or to meet the charges and reply thereto. The said procedure under Rules 17 & 18 of the CCA Rules have not been complied with.

9. On the basis of such illegal procedure and in violation of the statutory rules, the petitioner has been dismissed from service vide order dated 01.07.2013 notified by the Disciplinary Authority.

10. The petitioner has also challenged this order in review which has been dismissed and the order of the Disciplinary Authority has been affirmed by notification dated 22.10.2013 bearing No. 1297 of the department.

11. In view of the procedure having been conducted contrary to the provisions of the Rules as noticed above, the order of



the Disciplinary Authority dated 01.07.2013 as also the order dated 22.10.2013 passed on the petitioner’s review are hereby quashed. The matter is remanded to the stage of the Disciplinary Authority to proceed afresh in the matter, in accordance with the procedure prescribed under the CCA Rules noticed above.

12. With the aforesaid direction, the writ application is disposed off. The petitioner will be obliged to cooperate in the proceedings before the Disciplinary Authority so that the same may be conducted and disposed off expeditiously and preferably within eight weeks.

13. The writ petition is allowed in the terms stated above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

