

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.961 of 2015

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Hari Kishore Sinha, son of late Ram Prasad Sinha, resident of Village- Basbitta, P.S.- Majorganj, District- Sitamarhi, at present residing at Mohalla- Rajiv Nagar, Road no. 5, P.S.- Rajiv Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar ,
2. The Principle Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer-in-Chief-cum-Special Secretary, Road Construction Department, Bihar, Patna
4. The Superintending Engineer, Setu Nirupan Circle, Road Construction Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
Mr. Sanjay Kumar Sharma, Advocate
Mr. Sandhya Kumari Sinha, Advocate
For the Respondent/s : Mr. Arvind Kumar, AC to GA 9

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-04-2018

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

2. The petitioner has been proceeded against on basis of charge memo dated 25.10.2007 alleging that while he was posted as Assistant Engineer he had demanded an amount of Rs. 3000/- from some contractors and upon such complaint being made, he was caught red handed.

3. On the basis of such allegations proceedings were initiated against him. The seriousness with which the respondent State takes the case of such persons accused in allegations of corruption is



apparent from the manner in which the proceedings have been conducted against the instant petitioner. All the requirements under the Bihar CCA Rules which is the statutory rules providing adequate safeguards to conduct proceedings in accordance with fairness and observing the Principles of Natural Justice, have been violated right from issuance of the charge memo.

4. The charge memo itself is based on a letter dated 12.04.2007 addressed to the Commissioner-cum-Secretary, Road Construction Department seeking permission for sanction of prosecution against the instant petitioner. The FIR is enclosed with the said order. The pre-trap and post trap memorandum are also enclosed with the said letter. Other than these documents nothing has been relied upon by the department to bring home the charge under the said charge memo. The petitioner gave his written response.

5. After the first enquiry report which was submitted by order dated 27.08.2013 (Annexure 8/1) wherein the Enquiry Officer has given a report that till conclusion of the criminal case it was not possible to conclude the proceedings pending against the petitioner in the departmental enquiry, a second enquiry report has been called for by the disciplinary authority under letter dated 23.01.2014 from the same Enquiry Officer. On the same date i.e., 23.01.2014 a second enquiry report has been submitted holding the charge against the petitioner to be proved.



6. Thus, between submissions of the first enquiry report and the second enquiry report, no proceedings whatsoever has been conducted nor there is any additional evidence or material to even suggest that the charges were proved, when the earlier enquiry report specifically hold that it was not possible to prove the charge during pendency of the criminal case. The petitioners specific case is that apart from the said documents which documents are part of the criminal investigation, nothing has been produced to support the allegations against the petitioner in the proceedings. No oral evidence has been produced and no witness whatsoever has been examined in the proceedings before the Enquiry Officer.

7. It is the specific case of the petitioner that no oral evidence whatsoever has been produced in the proceedings before the Enquiry Officer. The Disciplinary Authority under letter dated 11.02.2014 has served a copy of the enquiry report upon the petitioner and called for his response to the second show cause notice within specified time framed. The same has been received in the department on 25.02.2014.

8. This Court finds that the petitioner has specifically raised the plea that the findings of the enquiry Officer is based on no evidence whatsoever. Pleadings to that effect have also been made in the writ petition that without considering the fact that no witness had been examined to prove the documents, the disciplinary authority has



notified the order of punishment dated 20.05.2014 terminating the services of the petitioner with immediate effect.

9. From the order passed by the disciplinary authority it is quite evident that the said submissions raised by the petitioner regarding there being no evidence, has not even been considered in the order of the disciplinary authority. The specific pleadings made by the petitioner before this Court in Para 21 of the writ petition regarding the proceedings based on no evidence, has also not been denied or controverted in the counter affidavit filed in this case by the respondent authorities. The case of the petitioner in so far as it states that no witness has been examined in the proceedings in support of the allegations or in support of the document relied upon stands admitted on the principle of non traverse.

10. The petitioner has also availed the remedy of review (Annexure 15) under Rule 24 (2) of the Bihar CCA Rules raising all the said points which has been raised before the Disciplinary Authority. The same has also met the same fate as that of the petitioner's second show cause filed before the Disciplinary Authority. A very elaborate review petition filed by the petitioner has been disposed off by a very cryptic order dated 14.11.2014 proclaiming to be a reasoned order. None of the points raised by the petitioner including the point that the instant case is a case of no evidence has been considered by the appellate authority. The review



application has been rejected in most casual and mechanical manner as noticed above.

11. Other than the letter dated 12.04.2007 i.e. the letter seeking permission for sanction of prosecution against the petitioner along with FIR, pre-trap/post trap memorandum, complaint and verification report on a complaint, no documents whatsoever has been produced by the department. Whether such documents which are part of the criminal investigation can be termed to be as evidence is no longer *res integra*. The issue stands decided by a decision of the Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank and Others*** reported in (2009) 2 SCC 570. The said documents *per se* can, by no stretch of imagination, be termed as evidence as their correctness are still subject matter of the criminal case.

12. Other than that as noticed above, no one has deposed in the proceedings in support of the said documents which have been produced by the department in the proceedings. There appears to be total infraction of the procedure contained in Rule 17(14) by the Enquiry Officer. Other than that even at the stage of consideration by the Disciplinary Authority there is total infraction of procedure prescribed under Rule 18 of the Bihar CCA Rules inasmuch as none of the points raised by the petitioner has been considered by the Disciplinary Authority.

13. In view of the aforesaid findings, this Court is left with



no option but to quash the order of the disciplinary authority dated 20.05.2014 bearing memo no. 3928 whereby and where under the services of the petitioner has been terminated. As a result of quashing of the order of termination, the order passed on the petitioner's review dated 14.11.2014 are also quashed.

14. As a result of quashing of the order of punishment, the petitioner would be entitled to his consequential benefits. This order however, will not preclude the respondents from proceedings afresh after observing the procedure prescribed in law.

15. The writ petition is allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.04.2018
Transmission Date	

