

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8280 of 2014

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1. Shambhu Sharan Sinha Son of Late Sita Ram Sinha resident of C- 64, Police Colony, Anisabad, Police Station- Gardanibagh, District- Patna 800002.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Water Resources Department, Bihar, Patna.
2. The Deputy Secretary, Water Resources Department, Bihar, Patna.
3. The Director, Revenue Administration, Water Resources Department, Bihar, Patna.
4. The Deputy Collector, Revenue Division, Water Resources Department, Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar

For the Respondent/s : Mr. SC15- AJEET PRATAP SINGH

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

C.A.V. JUDGMENT

Date: 13-04-2018

1. The petitioner seeks following reliefs:

(i) To issue a writ in the nature of Certiorari for quashing the order dated 15.03.2013 whereby the petitioner has been terminated from the services and also quashing of all consequential orders.

(ii) To issue a direction to the authorities to reinstate the petitioner in the services along with due promotions.

(iii) To issue a direction to the authorities for the payment of salary and other admissible benefits from the date the same has been stopped.

(iv) To issue any other relief or reliefs to which the petitioner is entitled to in the facts and circumstances of the case.

2. The facts requisite and relevant are that the



petitioner was appointed as Assistant Engineer, Water Resources Department, Govt. of Bihar in the year 1987. In the month of March, the petitioner took the charge as Assistant Engineer, Canal Circle, Purnea under Chief Engineer, Water Resources Department, Purnea. In the month of June, 1998, petitioner was asked to take additional charge as Dy. Collector, Revenue Division, Purnea. From the month of June, 1998, to April, 2003, the petitioner was asked to take additional charge of Dy. Collector, Revenue Division, Saharsa and later on, Dy. Collector, Revenue Division, Araria. For the first time, the Assistant Engineers were given additional charge of Dy. Collector of different revenue divisions of circles of Water Resources Department. The petitioner received information in the month of September, 2003 with regard to anomaly in account keeping, revenue receipts vis-à-vis expenditure incurred during the year 2002-03 from various circles of Purnea, Revenue Division. The petitioner enquired from the Cashier who informed the petitioner that some problem arose due to adjustment of money, allotment received from the Govt. and the revenue collected from the farmers as water rent. The petitioner informed the same to his successor but the petitioner was served with a show cause notice through Letter No.1371 dated 22.11.2003 calling upon the petitioner to explain the alleged financial irregularities on five Heads during his tenure but in the meantime, a committee was constituted vide order as contained in memo No.1374 dated



21.11.2003 to inspect the records of revenue division and submit comprehensive report. A departmental proceeding was initiated vide resolution dated 16.07.2005 as contained in Memo No.811 (Annexure 6). Sri Shyam Bihari Ram, Superintending Engineer, Water Drainage Circle, Water Resources Department, Purnea was appointed as conducting officer and Sri Banke Bihari Prasad, Executive Engineer of the Water Drainage and Investigation Division made the presenting officer. Memo of charges as contained in Letter No.3345 dated 17.08.2005 was served on the petitioner on 20.08.2005(Annexure 7). The petitioner submitted his show cause to the enquiry officer but the enquiry officer did not hold any departmental enquiry. The petitioner again filed his reply to the show cause(Annexure 13 and 13/1) but the petitioner was never summoned and asked to produce any witness. The enquiry officer did not conduct any enquiry but the petitioner received order as contained in Memo No.1052 dated 12.10.2009 issued under the signature of Dy. Secretary, Water Resources Department, Bihar, Patna whereby his services has been terminated with effect thereon.

3. The petitioner filed CWJC No.11259 of 2010 against the order of his termination from services as contained in Notification No.1052 dated 12.10.2009(Annexure 14) and for other consequential benefits. Panta High Court vide order dated 01.12.2011 set aside the order dated 12.10.2009 on the ground that no show cause



notice after submission of the enquiry report was given to the petitioner and consequently petitioner was directed to file reply to the second show cause(Annexure 15). The petitioner submitted his detailed show cause along with judgment and order of the High Court passed in CWJC No.11259 of 2010(Annexure 16) but again vide notification as contained in Notification No.22 contained in Memo No.356 dated 15.03.2013, the petitioner has been dismissed from services holding that the second show cause filed by the petitioner was not found satisfactory and the petitioner has committed gross financial irregularity and misappropriated the Government money. Against which the petitioner filed this writ petition.

4. The respondent-State filed counter-affidavit and in sum and substance stated the facts that the departmental enquiry was held in accordance with law. All the eight charges made against the petitioner were proved and after considering the second show cause of the petitioner, the petitioner has been dismissed from services in accordance with law.

5. The learned counsel for the petitioner submits that order of termination is absolutely illegal as the same is based on no evidence. It is submitted that enquiry officer did not hold any enquiry. Enquiry officer asked the petitioner to give his reply to the show cause and the memo of charges but thereafter the enquiry officer never asked the presenting officer to adduce oral and documentary



evidence on which the department proposed to prove the charges against the petitioner. The enquiry officer himself assumed the function of the presenting officer, perused the records and submitted enquiry report on 12.04.2007. From perusal of the enquiry report, it would appear that the enquiry officer himself after perusal of the documents and show cause of the petitioner submitted the report.

6. It is further submitted that on the basis of such enquiry report, petitioner has been dismissed from services. The petitioner filed CWJC No.11259 of 2010 and Patna High Court vide order dated 01.12.2011 set aside the order of termination on the sole ground that the departmental proceeding consists of two stages. The first commenced when the enquiry begins and enquiry report is submitted and the second commenced when the second show cause notice issued. It was found that no second show cause notice was given along with the enquiry report to the petitioner and that amounts to denial of proper hearing. It is further submitted that the petitioner raised all the grounds with regard to the conduct of departmental proceeding but this Court set aside the order of dismissal with liberty to the petitioner to raise all the points in addition to the objections raised with regard to non-compliance of the mandatory procedure in departmental proceeding and non-examination of any of the witness during the departmental proceeding. The petitioner in his show cause (Annexure 16) has categorically stated that no departmental



proceeding was held in accordance with the procedures as laid down under Section 17 of the Bihar Government (Classification Control & Appeal) Rules, 2005(hereinafter referred to C.C.A. Rules, 2005). It is submitted that the provisions as contained in different sub-rules of Rule 17 make it obligatory to the disciplinary authority to furnish all the papers and the statement of the witnesses to the proceedee along with the memo of charges. The memo of charge does not contain any papers. It is further submitted that after submission of show cause reply, the enquiry authority is required to ask the presenting officer to present oral and documentary evidence in order to prove the charges. It also provides that even if the proceedee does not appear, the presenting officer cannot be absolved from presenting the evidence during the course of departmental enquiry. If the presenting officer failed to bring on record the evidence in accordance with law and the enquiry officer himself assume the duty of presenting officer and submit report on the basis of the records not brought on record in accordance with law as prescribed under Rule 17 of the C.C.A. Rules, 2005, the enquiry report is vitiated and that amounts to violation of natural justice as no proper hearing was given to the proceedee. It is further submitted that the enquiry officer has to act an independent arbitrator and if he assumes the duty of a presenting officer and submits the report on the basis of the documents although not brought on record in accordance with law during the course of departmental



proceeding, the report shall be vitiated as the same amounts to carry elements of biasness.

7. It is further submitted that even in the departmental proceeding, the disciplinary authority and on his behalf the presenting officer has to bring on record all the evidences either oral or documentary. The proceedee has to be provided sufficient opportunity to cross-examine the witness and controvert the documents. After closure of the case of disciplinary authority, the enquiry officer shall give sufficient opportunity to the proceedee to bring on record his own evidence in support of his case. Of course, the strict law of Evidence Act is not applicable but that does not mean that the presenting officer shall not examine any witness or produce any documents on the date fixed for holding the departmental enquiry and the enquiry officer would submit the report on the basis of perusal of the documents. Such report is no report in the eye of law and the same cannot be said to be based on evidence. It is further submitted that in pursuance of the order of this court passed on 01.12.2011 in CWJC No.11259 of 2010, the petitioner has filed his show cause with regard to all the eight charges and also stated that the departmental enquiry was not held in accordance with law as no procedure was followed. It is further submitted that the petitioner has made very specific statement that after submission of show cause by the petitioner enquiry officer never fixed any date asking the presenting officer to



adduce the evidence on the basis of which the disciplinary authority proposes to prove the charge and, therefore, the enquiry report is vitiated as the same is based on no evidence and on such enquiry report, the punishment of dismissal is not sustainable. It is further submitted that from the order of dismissal (Annexure 17), it would appear that the disciplinary authority has not at all considered the show cause filed by the petitioner with regard to the charges and the findings of enquiry officer as well as procedural illegality committed by the enquiry officer that amounts to non-consideration of the show cause of the petitioner. On this ground also, the order of dismissal of the petitioner is bad.

8. The learned counsel for the respondents-State submitted that no procedural illegality has been committed in the departmental enquiry. The second show cause of the petitioner has also been considered. The disciplinary authority after taking into consideration the second show cause reply of the petitioner found the charges proved and passed the order dismissing the petitioner from services as the petitioner committed financial irregularity and misappropriated huge Government money.

9. Having considered the submissions of both sides, the first question arises for consideration as to whether the departmental proceeding was held in accordance with law and the enquiry officer held the enquiry as prescribed under Rule 17 of the



C.C.A. Rules, 2005? The petitioner has stated that the disciplinary authority did not serve the relevant papers and the statement of witnesses in view of the provisions as contained in sub-rule (2) and (3) of Rule 17. The memo of charges does not contain the documents and the statement of witnesses on the basis of which the disciplinary authority proposed to prove the charges. It is further stated that the petitioner although submitted his show cause after initiation of departmental proceeding vide resolution dated 16.07.2005. Superintending Engineer, Water Resources Department, Purnea who was appointed as conducting officer but the conducting officer time and again directed to submit reply before the conducting officer vide Letter No.2399 dated 23.05.2006, Letter No.839 dated 10.07.2006 and Letter No.11 dated 22.04.2007. The petitioner again submitted his detailed reply on 17.03.2007 along with the document showing the earlier reply sent by him through registered post but thereafter the enquiry officer did not call the petitioner to participate in the departmental proceeding nor asked the presenting officer to present evidence on which the disciplinary authority proposed to prove the charge and in fact, the enquiry officer submitted his enquiry report on the basis of which the second show cause is said to have been issued but the petitioner never received any show cause notice. All of a sudden, the petitioner received the order as contained in Memo No.1052 dated 12.10.2009 by which the services of the petitioner has



been dismissed. It is submitted that the petitioner moved this court against the aforesaid order in CWJC No.11259 of 2010 and the order of dismissal was set aside on the sole ground that no second show cause was properly served on the petitioner. It appears that the State has filed counter-affidavit but did not controvert all these facts. Therefore, it is evident that enquiry officer did not hold the enquiry in accordance with the procedures prescribed in Rule 17 of the C.C.A. Rules, 2005.

10. Rule 17 of C.C.A. Rules, 2005 contains the procedure of a departmental proceeding meant for imposing major punishments. Sub-rule (1) says that for imposing any of the penalties specified in clause (vi) to (x) of Rule 14 shall be made after holding an inquiry, as far as may be, in the manner provided in these Rules. Sub-rules (2) and (3) says that the disciplinary authority after examining any imputation of misconduct or misbehaviour he may himself inquire into or appoint under these Rules an authority to inquire about the truth. Where it is proposed to hold inquiry against a Government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge, statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain a statement of all relevant facts including any admission or confession made by the



government servant and a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

11. From perusal of Annexure 6 and 7, it would appear that disciplinary authority took resolution to initiate departmental proceeding against the petitioner appointing Shyam Bihari Ram, Superintending Engineer, Water Drainage Circle, Purnea and Banke Bihari Prasad, Executive Engineer, Water Drainage and Research Division, Purnea as presenting officer. The memo of charges was given vide Annexure 7 but the memo of charges does not contain any statement of facts or the documents. Thus, admittedly it is evident that the disciplinary authority did not serve relevant documents and the statement of witnesses along with the memo of charges to the petitioner.

12. On 17.03.2007, the petitioner sent his reply to the charges for the third time by the registered post but thereafter the petitioner did not receive any communication from the enquiry officer and the enquiry officer without holding departmental enquiry as prescribed under sub-rule (14) of Rule 17 submitted the enquiry report on the basis of which the disciplinary authority for the first time dismissed the petitioner vide order as contained in Memo No.1052 dated 12.10.2009. Sub-rule (7) and (8) says that the Government servant may himself appear or may engage a legal practitioner. Sub-



rule (10) says the enquiry officer after perusal of the show cause ask the presenting officer to produce the evidence by which he proposes to prove the articles of charge and fix a date for holding enquiry. Sub-rule (14) clearly says that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the presenting officer and may be cross-examined by or on behalf of the government servant. The presenting officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit. Sub-rule (16) says that when the case of the disciplinary authority is closed, the government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the government servant shall be required to sign the record and thereafter the government servant shall produce the evidence and he may examine himself on his own behalf if he so prefers. The witnesses so examined on behalf of the government servant may be cross-examined on behalf of the disciplinary authority but from perusal of the enquiry report as contained in Annexure B to the counter-affidavit shows that the enquiry officer did not advert to any



witness adduced by the presenting officer during departmental proceeding and it appears that the disciplinary authority has recorded his finding on the basis of perusal of the show cause and the records by himself. It certainly appears that the enquiry officer did not hold the enquiry in accordance with the procedure prescribed under Rule 17 of the C.C.A. Rules, 2005 and the same is based on no evidence. Besides this procedural illegality committed by the enquiry officer, the enquiry officer himself appears to have assumed the duty of the presenting officer as it appears that enquiry officer never asked the presenting officer to produce any witness nor the presenting officer ever adduced any evidence. Enquiry officer himself perused the records and the show cause filed by the petitioner and prepared the enquiry report, therefore, the enquiry officer has not acted as independent arbitrator and thus the enquiry report carries elements of biasness. It is also evident that the petitioner earlier moved before this Court in CWJC No.11259 of 2010 against the order of his dismissal as contained in Annexure 14 and this Court giving liberty to the petitioner to submit show cause taking all available grounds against the finding of the enquiry officer as well as with regard to the illegality in holding departmental proceeding. The petitioner also filed his detailed show cause after the order of his dismissal being set aside vide order passed in CWJC No.11259 of 2010 but again the disciplinary authority appears to have passed the order inflicting the



punishment of dismissal but it appears that disciplinary authority did not look into the objections raised by the petitioner about the illegality committed by the enquiry officer in holding the departmental proceeding. The disciplinary authority appears to have not even considered the reply of the second show cause of the petitioner on the ground that the same is not tenable. It appears from perusal of Rule 18 of C.C.A. Rules, 2005 that disciplinary authority after having received the enquiry report and on perusal of the same, authority may for reasons to be recorded in writing, may remit the case to the inquiring authority for further enquiry according to the provisions of Rule 17, the disciplinary authority may after receiving of the enquiry report as per Rule 17 (23) (ii) shall if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose. It appears that the first requirement is that the disciplinary authority shall peruse the inquiry report duly submitted under sub-rule (23) (ii) of Rule 17 but on bare perusal of the Rules and also contended by the petitioner in his second reply to the show cause that no enquiry as envisaged under sub-rule (14) of Rule 17 is held by the inquiry officer but even then the disciplinary authority ignoring the illegality inflicted punishment of dismissal. Non-observance of the prescribed procedure amounts to non-providing of sufficient opportunity to the government servant in



order to defend his case and that amounts to violation of natural justice.

13. Therefore, I find that the order of dismissal as contained in Memo No.356 dated 15.03.2013(Annexure-17) is illegal, bad and unsustainable.

14. In the result, the writ petition is allowed. The order dated 15.03.2013 is set aside. The matter is remitted to the disciplinary authority to proceed further in accordance with law.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	30.08.2017
Uploading Date	18.04.2018
Transmission Date	18.04.2018

