

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22005 of 2014

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1. Bibhuti Nath Jha Son of Late Baidya Nath Jha, Resident of Mohalla - Kadamkuan, P.S. - Kadamkuan, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief-Cum-Additional Commissioner-cum Special Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. The Chief Engineer, National Highway Wing, Road Construction Department, Govt. of Bihar, Patna.
5. The Joint Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. The Executive Engineer, National Highway Divison, Road Construction Department, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak

For the Respondent/s : Mr. Ram Balak Mahto

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 21-02-2018

Heard both sides.

2. The petitioner in this writ petition seeks quashing of the resolution contained in Memo No.12361(S) dated 06.11.2006 issued by the Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Bihar, Patna (Annexure 9) whereby and whereunder a departmental proceeding was initiated against the petitioner under Rule 17 of Bihar Government Servants(Classification, Control & Appeal) Rules, 2005(hereinafter referred to for the sake of brevity as C.C.A. Rules, 2005) without any



substantive evidence although the Junior Engineers and Executive Engineer were also asked for show cause and they were also proceeded departmentally for the same charge but they were exonerated and the proceeding against the petitioner is pending since 2006. The petitioner further seeks quashing of second show cause as contained in Letter No.5847 dated 17.06.2016 issued under the signature of Joint Secretary, Building Construction Department, Bihar, Patna and to quash the enquiry report dated 30.07.2015 of Departmental Enquiry Commissioner(Annexure 20/A and 20/B).

3. The facts which are relevant for the disposal of this writ petition are as follows:

The petitioner was posted as Assistant Engineer in National Highway Sub Division, Barauni from 04.01.2000 to 02.01.2003. The Executive Engineer, N.H. Division, Muzaffarpur sought allotment of Rs.50 lacs for renewal of layer work of N.H.28 from the Chief Engineer, N.H. Wing, Road Construction Department, Bihar, Patna on 23.03.2001. The Chief Engineer gave approval for execution of renewal of layer work of N.H. 28 and directed the Executive Engineer to execute the said renewal work departmentally. On 24.03.2001(Annexure 1), the Chief Engineer, N.H. Wing, Road, Construction Department, Bihar allotted Rs.32.66 lacs for periodical renewal of N.H. 28 vide order No.164 dated 25.03.2001. Parmanand



Mishra was Executive Engineer, N.H. Division, Muzaffarpur. Ram Sevak Singh and Ram Naresh Pandey were Junior Engineers who were posted at Barauni and Dholi Sections under the petitioner who was working as Assistant Engineer in N.H. Division, Muzaffarpur. Parmanand Mishra, Executive Engineer issued letter No.334 dated 26.03.2001(Annexure 3) to the Superintending Engineer, N.H. Circle, Muzaffarpur informing him that the allotment of Rs.32.66 lacs had already been made available to the Division for renewal work of N.H. 28 departmentally as sanctioned by the Chief Engineer. Stone chips and bitumen be made available. Chief Engineer, N.H. Wing, Road Construction Department, Bihar Patna vide letter No.1327 dated 04.07.2001 issued post facto sanction for purchasing stone chips for the renewal work(Annexure 4) and the works started. The works for renewal of N.H.28 in Barauni Section and Dholi Section respectively were executed by Ram Sevak Singh and Ram Naresh Pandey, Junior Engineers of the respective Sections under the supervision of the petitioner. Both the Junior Engineers being the agents of the execution of the works received advance from Executive Engineer, Road Division, Muzaffarpur through the petitioner for purchase of stone chips from Begusarai Dump and provided the same to Mechanical Division, Road Construction Department, Muzaffarpur for preparation of mixture of chips and bitumen. Tow years after completion of the



work, the petitioner received a letter No.1185(S) dated 15.02.2003(Annexure 5) to show cause as to why the departmental proceeding be not initiated against him for not getting the work done satisfactorily and for committing different illegality and irregularity in execution of the works. The petitioner submitted his show cause within 15 days but the authority did not pass any order of the show cause of the petitioner within three years and suddenly the authority resolved to initiate departmental proceeding vide resolution dated 06.11.2006 as contained in Annexure 9.

4. Mr. Binod Kumar Kanth, learned senior counsel appearing on behalf of the petitioner submitted that all of a sudden that too after more than four years from the first show cause, the Department illegally resolved to initiate departmental proceeding without following the provisions as contained in Rule 17(2), 17(3) and 17(4) of the C.C.A. Rules, 2005. From the memo of charges, it would appear that altogether 7 charges have been framed against the petitioner. The first charge is relating to advance giving to Junior Engineers against which work was done without sanction of the estimate. It is submitted that Rule 200 and 293 PWD Code provides for execution of urgent work and say that no sanction is required. Moreover, the Chief Engineer who is the sanctioning authority has already allotted the required fund and also accorded post facto



sanction for execution of the work. The petitioner was in between the Junior Engineers and Executive Engineer. The Executive Engineer allotted the fund after receiving from the Chief Engineer and Junior Engineers were the executing agents. It is submitted that charge nos.2 and 3 are with regard to non-submission of accounts in same financial year. Charge No.4(a) and 4(b) are repetition of charge Nos.1, 2 and 3. Charge No.4(c), 4(d), 4(e) and 4(f) are all about procedural irregularities said to have been committed by the petitioner but the petitioner is not at all responsible for all those things. According to the order of the Executive Engineer, the petitioner made the fund available to the Junior Engineers. It is submitted that from Annexure 9/A and 9/B, it would appear that initiation of departmental enquiry and framing of charges are in violation of sub-rule 3 of Rule 17 of the C.C.A. Rule. It mandates that the disciplinary authority shall draw up or caused to be drawn up the substance of the imputations of misconduct or misbehaviour as a distinct and definite article of charge. A statement of the imputations of misconduct or misbehaviour in support of each article of charge must contain the statement of all relevant facts including any admission or confession made by the Government Servant and a list of such document by which, a list of such witnesses by whom, the articles of charge are proposed to be sustained but no such statement of imputations of misconduct or



misbehaviour in definite terms is attributed to the petitioner and not a single document and the name of a witness is attached with the memo of charges. It is further submitted that allegation of purchase of stone chips and other charges relate to Ram Naresh Pandey, Junior Engineer who purchased stone chips and he was also custodian of the site material and he also delivered the purchased material to hot mix plant at Dholi but Ram Naresh Pandey was not proceeded. Even show cause notice was not issued against him.

5. Mr. B.K.Kanth, learned senior counsel for the petitioner further submits that after initiation of the departmental proceeding, the petitioner appeared before the Enquiry Commissioner and requested for supply of relevant documents so that the petitioner may file his show cause. From the order of Enquiry Commissioner on different dates such as 21.12.2009 and onwards, it would appear that the Enquiry Commissioner asked the Presenting Officer namely Sri Chandra Shekhar, Dy. Director, Purchase and Transportation, Road Construction Department, Bihar, Patna to provide the documents to the proceedee. The petitioner submitted his show cause on 17.10.2012 before the Enquiry Commissioner and also submitted supplementary show cause before the Departmental Enquiry Commissioner. It is submitted that the Enquiry Commissioner altogether gave a go-by to the procedure laid down under different sub-rules of Rule 17 of CCA



Rules, 2005 and sent the show cause and supplementary show cause of the petitioner to the Department for examination and report. The expert committee of the Department gave opinion that irregularities were simply procedural error and exonerated the petitioner in its report as contained in letter No.1055(S) dated 12.02.2013 sent to the Presenting Officer. It is submitted that Ram Sevak Singh, the then Junior Engineer and Sri Parmanand Mishra, the then Executive Engineer were fully exonerated vide Annexure 18 and 16 respectively.

6. Mr. B.K.Kanth, learned senior counsel further submits that after submission of opinion of the expert committee of the Department as contained in Annexure 12, the Departmental Enquiry Commissioner again adopted a strange procedure not at all prescribed in Rule 17 of the C.C.A. Rules, 2005 and get the report of the expert committee (Annexure 12) rejected and asked the Presenting Officer to get another report of the expert committee of the Department. The expert committee of the Department submitted another report on 15.03.2013 as contained in Letter No.2193(S) of Dy. Secretary, Vigilance.

7. Mr. B.K.Kanth, learned senior counsel for the petitioner further submits that admittedly departmental enquiry was initiated on 06.11.2006 and in between 06.11.2006 to 30.07.2015, five Departmental Enquiry Commissioners namely S.P. Keshav, S.Sidhu,



Rameshwar Singh, R.K.Khandelwal and Amitabh Verma did not conclude the proceeding nor departmental proceeding was posted for evidence asking the Presenting Officer to adduce oral or documentary evidence and the same remained pending due to non supply of document. Sri Manoj Kumar Srivastava joined on 30.07.2015 as Departmental Enquiry Commissioner and he adopted strange, bizarre and illegal procedure not found in the procedure prescribed under different sub-rules of Rule 17 and concluded the proceeding. He submitted the report in violation of the sub-rules 11, 12, 13, 14, 22, 23 of the C.C.A. Rules, 2005 holding the petitioner guilty of all the charges. In fact, the enquiry report is no report as the same is based on the opinion of the enquiry officer and on perusal of the records and the opinion of the expert committee. No evidence was adduced during the departmental enquiry as prescribed under different sub-rules of Rule 17. It is further submitted that the Rule prescribes that after making the documents and the list of witnesses available to the delinquent the enquiry officer shall ask the Presenting Officer to adduce evidence oral and documentary on the basis of which the Department proposes to prove the charges against the proceedee but from perusal of the entire report and the ordersheet of the Departmental Enquiry Commissioner, it would appear that no such step has been taken nor the Presenting Officer adduced any evidence



but even then the Departmental Enquiry Commissioner submitted enquiry report holding the petitioner guilty. It is submitted that the enquiry report is bad and illegal on the following grounds:

(i) Departmental Enquiry Commissioner did not hold the enquiry according to the procedure laid down under Rule 17 of the C.C.A. Rules, 2005. The Departmental Enquiry Commissioner has himself assumed the duty of the Presenting Officer as he did not ask the Presenting Officer to adduce any evidence either oral or documentary nor Presenting Officer adduced any evidence according to the provisions as contained in sub-rule 14 and 15 of Rule 17. The Presenting Officer has to examine the oral witness if any and produce the documentary evidence in accordance with law during the course of departmental proceeding and if the procedure as laid down under sub-rule 14 of Rule 17 is not followed, it vitiates the departmental proceeding and amounts to violation of natural justice.

(ii) It is further submitted that the enquiry officer should act as independent arbitrator in order to come to an independent finding on the basis of the evidences available on record but the Departmental Enquiry Commissioner himself did not act as independent arbitrator and submitted the report himself after perusing the documents and the enquiry report of the expert committee of the Department. Therefore, the enquiry report itself is vitiated and not acceptable.



(iii) On such illegal enquiry report not based on any evidence, the disciplinary authority ask second show cause in violation of sub-rule 1 and 2 of Rule 18 of C.C.A. Rules, 2005 and without looking into the facts that the report is not based on any evidence and the same should have been outrightly rejected.

(iv) The entire departmental proceeding is liable to be quashed since the petitioner was asked show cause firstly in the year 2003 itself and without coming to the definite conclusion of any misconduct or irregularities after perusal of show cause of the petitioner the disciplinary authority resolved to initiate departmental proceeding in the year 2006 i.e. 06.11.2006. The departmental proceeding remain pending without any fault on the part of the petitioner for non-supply of requisite documents asked for by the petitioner and during this period, five Departmental Enquiry Commissioners kept on directing the Presenting Officer to make the documents available to the proceedee and the sixth Departmental Enquiry Commissioner who joined on 30.07.2015 devised strange, bizarre and illegal procedure not found place in the procedure prescribed in Rule 17 of the C.C.A. Rules, 2005 and concluded the proceeding without asking the Presenting Officer to produce any witness and the documents in accordance with law and he submitted report holding the petitioner guilty.



8. On the contrary, Mr. Harishankar Rai, learned A.C. to A.G. firstly submits that writ petition is premature as the petitioner came before this court and seeks quashing of the second show cause issued under sub-rule 2 of Rule 18 of the C.C.A. Rules, 2005. The petitioner has got expedient and alternative remedy. The petitioner should have filed second show cause agitating all the points before the disciplinary authority as per sub-rule 4, 5, and 6 of Rule 18.

9. Mr. Harishankar Rai, learned counsel for the State further submits that the charges are not based on non-est ground and the delinquent did not take this remedy for quashing of the initiation of the departmental proceeding in the year 2006 at such belated stage that too after 8 years from the date of initiation of the departmental proceeding. The petitioner was given full opportunity to inspect all the documents during the departmental proceeding required to be produced in order to prove the charges. Learned counsel for the petitioner placed his reliance on para 5 of the judgment of Devtosh Pal Choudhary v. Punjab National Bank, (2002) 8 Supreme Court Cases 68. It is further submits that petitioner has not referred any facts that the documents on which the Departmental Enquiry Commissioner placed his reliance were not supplied to him or he was not allowed to inspect those documents. It is further submitted that this Court under Article 226 of the Constitution of India cannot interfere into the



findings of the enquiry officer if it is based on evidence. Learned counsel also placed his reliance on the judgment of Supreme Court rendered in the case of State Bank of India & Ors. v. Samrendra Kishore and Ors. reported in (1994) 2 Supreme Court Cases 537.

10. Having considered the submissions of both sides and on perusal of records, I find that the submissions of learned A.C. to A.G. is beyond the records and irrelevant and not acceptable at all simply on the ground that the petitioner firstly filed this writ petition in the year 2014 against the order initiating Departmental Enquiry on 06.11.2006 but the same has not yet been concluded. The departmental proceeding remained pending before five Departmental Enquiry Commissioners, who invariably directing the Presenting Officer to supply the copies of the documents on which the Department proposed to prove the charges. Later on, the petitioner was allowed to inspect all those documents. The sixth Departmental Enquiry Commissioner did not ask the Presenting Officer to adduce oral and documentary evidence. When the writ was pending before this Court, sixth Departmental Enquiry Commissioner joined and he adopted strange and bizarre procedure to conclude the departmental enquiry. The petitioner by interlocutory petition has assailed the enquiry report as well as the second show cause on the ground that the Departmental Enquiry Commissioner did not at all follow the



procedure prescribed under Rule 17 of the C.C.A. Rules, 2005 and the disciplinary authority upon receipt of the such enquiry report which is not based on any evidence ask the petitioner to show cause although Rule 18 commands the disciplinary authority to act upon receipt of the enquiry report submitted in accordance with sub-rule 23 of Rule 17. Then the disciplinary authority shall serve a copy of the enquiry report and call upon the proceedee to give show cause. Submission that the petitioner did not move immediately after initiation of the departmental proceeding, on the ground of limitation, the petitioner cannot be debarred from seeking relief for quashing the departmental proceeding if such departmental proceeding remained pending for more than 8 years after its initiation only for supply of papers. Illegal prolongment of the departmental proceeding is itself a ground for its quashing. Now on perusal of the record, the ordersheet of the Departmental Enquiry Commissioner, the certified copy of which has been filed by the learned A.C. to A.G during the course of hearing and on perusal of the provisions as contained in Rule 17 of C.C.A. Rules, 2005, I find that Rule 17 of C.C.A. Rules, 2005 prescribed the procedure for imposing penalties specified in clause (vi) to (xi) of Rule 14. This Rule prescribed the procedure for imposing major punishment as described in clause (vi) to (xi) Rule 14. Sub-rule 3 of Rule 17 cast duty upon the disciplinary authority to draw up or caused



to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge and statement of the imputation of the misconduct or misbehaviour in support of each article of charge which shall contain the statement of relevant facts including any admission or confession made by the Government servant and a list of such witnesses by whom, the article of charge is proposed to be sustained but from perusal of Annexure 9 and 9/A, the resolution of initiation of the departmental proceeding and article of charge, it would appear that Department did not serve the statement of facts and the list of such documents and the list of such persons by whom the articles of charge are proposed to be sustained. The petitioner appeared before the Departmental Enquiry Commissioners but since 2006 till 30.07.2015, five Departmental Enquiry Commissioners kept on directing the Presenting Officer to supply the copy of the documents to the proceedee. The petitioner was directed to inspect the documents and petitioner in pursuance thereof inspected those documents but even then the case remained pending till sixth Departmental Enquiry Commissioner joined. Before that the petitioner had already filed the present writ petition on 19.12.2014.

11. Mr. Manoj Kumar Srivastava joined as Departmental Enquiry Commissioner and before him for the first time, the record came on 18.09.2012. On 13.11.2012, the petitioner



appeared and submitted that he had already filed show cause. The Departmental Enquiry Commissioner directed the proceedee to inform him about non-supply of any papers. On 29.01.2013, the enquiry officer directed the Presenting Officer to get the departmental opinion of the Department on the show cause filed by the petitioner. The learned counsel for the petitioner has pointed out that Departmental Enquiry Commissioner adopted a strange and bizarre method to conclude the enquiry. There is no provision in Rule 17 of C.C.A. Rules, 2005 to seek opinion of the Department on the show cause filed by the proceedee before the Departmental Enquiry Commissioner. Sub-rule 14 says that after serving all the documents and receipt of the show cause, the Departmental Enquiry Commissioner shall fix the date of enquiry and ask the Presenting Officer to produce oral and documentary evidence by which the articles of charge are proposed to be proved and the same shall be proved by or on behalf of the disciplinary authority. The witness shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Govt. servant. The Presenting Officer shall be entitled to re-examine the witnesses on any point on which they have been cross-examined but not any new matter without the leave of the enquiring authority. Sub-rule 15 further provides that if the Presenting Officer desires to produce evidence not included in



the list of documents and witnesses, the Presenting Officer may examine such witness or produce such document prior to permission of the enquiry officer, in that event, the Govt. servant shall be entitled to have a copy of the list of further evidence proposed to be produced and adjournment for three dates should be granted for such purpose. Sub-rule 16 gives opportunity to the Govt. servant after closure of the case of the disciplinary authority to present the statement of defence and produce evidence. After closure of the case by the Govt. servant, the enquiry authority shall question him on the circumstances appearing against him in the evidence for the purpose of enabling the Govt. servant to explain any circumstances appearing against him. Sub-rule 19 then prescribes that thereafter the enquiry officer after completion of the evidence hear the Presenting officer and permit them to file written briefs of their respective cases, if they so desired but it appears from perusal of the entire ordersheet of the Departmental Enquiry Commissioner that even after filing show cause by the proceedee, the Departmental Enquiry Commissioner did not ask the Presenting Officer to examine witnesses and produce documents in accordance with law. No such procedure was held for examination of witnesses and production of documentary evidences during the pendency of the departmental enquiry. It appears that on the basis of the documents kept on record and the second report of the



expert committee on the show cause filed by the petitioner, the Departmental Enquiry Commissioner asked question from the proceedee, the petitioner and on that basis he concluded the departmental enquiry and submitted report. On perusal of the aforesaid facts and the entire ordersheet of the Departmental Enquiry Commissioner, I have got no hesitation to hold that the Departmental Enquiry Commissioner who submitted the enquiry report adopted a strange and bizarre procedure strange to the rules and procedure prescribed under different sub-rules of Rule 17 of the C.C.A. Rules, 2005. The Departmental Enquiry Commissioner did not ask the Presenting Officer to examine the witnesses and produce the documents. Therefore, the report of the Departmental Enquiry Commissioner is based on no evidence.

12. It is also evident that the Departmental Enquiry Commissioner by adopting a strange procedure not prescribed in Rule 17 of the C.C.A. Rules 2005 examined the documents of his own without being the same brought on record in accordance with law and also examined the proceedee. The Rule prescribes that the documents should be produced in accordance with law. Of course, the strict rule of evidence does not apply in a departmental proceeding but it does not mean that without producing any evidence or documents in accordance with law the Departmental Enquiry



Commissioner/enquiry officer himself perused the documents and submitted the report. In fact, such report by the enquiry officer or Departmental Enquiry Commissioner shall be deemed to be based on no evidence.

13. The Departmental Enquiry Commissioner or the enquiry officer is supposed to act as independent arbitrator and if the enquiry officer assumes the duty of Presenting Officer, it would certainly amount that he is not acted as independent arbitrator and his report on the basis of his own perusal and assessment of documents without bringing those documents on record in accordance with law shall be treated as biased report and amounts to violation of natural justice. If the enquiry report is submitted violating the procedure prescribed under the rules that amounts to violation of natural justice and not sustainable.

14. From perusal of the entire records, I also find that works of renewal and repairing of N.H.28 was undertaken by the order of the Executive Engineer duly sanctioned by the Chief Engineer. Two Junior Engineers namely Ram Sevak Singh and Ram Naresh Pandey were executing agents of the works. The petitioner was Assistant Engineer and he was to supervise the works done by two Junior Engineers in their respective sub sections. Parmanand Mishra, the then Executive Engineer was also to supervise the works



done by the Assistant Engineer and two Junior Engineers but it appears that no departmental proceeding was initiated against Ram Naresh Pandey, one of the Junior Engineers who was executing agent of the work. Departmental enquiry was initiated against Ram Sevak Singh and Parmanand Mishra but they were exonerated on one ground or another. Therefore, the continuation of the departmental proceeding only against the petitioner appears to be selective and discriminatory.

15. It is admitted fact that the departmental proceeding was initiated on 06.11.2006 but it remained pending for more than 10 years and the Departmental Enquiry Commissioner submitted his report without allowing the Presenting Officer to adduce any evidence and he himself assumed the charge of Presenting Officer. The Departmental Enquiry Commissioner was to examine the proceedee under sub-rule 18 of Rule 17 in order to give opportunity to the proceedee to explain any facts or the evidence against him collected during the course of departmental proceeding but Departmental Enquiry Commissioner proceeded. He has examined and questioned the proceedee as if he is appointed as Presenting Officer on behalf of the Department. Therefore, the report of the Departmental Enquiry Commissioner is based on no evidence and also biased.

16. Having considered the facts aforesaid, I find that the order dated 06.11.2006(Annexure-9) initiating the departmental



proceeding cannot be allowed to continue for indefinite period and the report of the Departmental Enquiry Commissioner dated 30.07.2015(Annexure 20/B) and the second show cause dated 17.06.2016(Annexure-20/A) are not sustainable in law and are set aside.

17. Accordingly, the writ petition is allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.03.2018
Transmission Date	

