

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11156 of 2014

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Ram Janak Singh Son of Late Nanhak Singh Resident of Village Mahadeo Bigha,
Via Karpi, P.O- Dora, PS- Rampur Chouram, District- Arwal (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Special Works Officer, Rural Works Department, Govt. of Bihar, Patna.
5. The Executive Engineer, Rural Works Division, Jagdishpur, P.O & P.S- Jagdishpur, District- Bhojpur.
6. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
7. The Treasury Officer, Arwal, P.O & P.S- Arwal, District- Arwal (Bihar)
8. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Advocate
Mr. Krishna Murari, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 26-06-2018

Heard learned counsel for the petitioner. None appears
on behalf of the State.

2. On 4.04.2007 while the petitioner was posted as
Junior Engineer at the Block Establishment, Goh, District Aurangabad
in the Rural Works Department he was arrested pursuant to the
complaint that he had demanded illegal gratification in respect of
some works performed by the allegationist.

3. The petitioner came to be released from confinement
on 07.06.2007. Specific case is that he had been caught red handed



with an amount of Rs. 10, 000/- as being a part of illegal gratification demanded by the petitioner. On 30.09.2010 the charge memo came to be issued. The allegations were the same as the allegation which formed the basis for the petitioner's arrest and institution of Vigilance P.S. Case. The petitioner submitted his response. Along with the charge-memo the respondents have relied upon 4 documents reporting to be the evidence on which they wanted to sustain the charges. The first & second evidence is a pre-trap memorandum and post trap memorandum, in respect of the petitioner's arrest by the vigilance team. The third evidence is the First Information Report. The fourth evidence is a copy of Section 13 (d) (i) of the Prevention of Corruption Act, 1988 and Section 3 (1) of the Bihar Government Servant's Conduct Rules, 1976. On the basis of such evidence the department proposed to sustain the allegations against the petitioner.

4. The Secretary to the Engineer-in Chief i.e. the Enquiry Officer has submitted the enquiry report dated 03.02.2012. In his opinion since the matter was pending for consideration before the Vigilance Court, the proceedings against the petitioner should be subject to the final decision of the criminal case. After submitting the enquiry report the Enquiry Officer came to be transferred and in place of the earlier Enquiry Officer, under office order dated 26.07.2012, one Chandrashekhar Sahu was appointed as Enquiry Officer and



accordingly, another enquiry report came to be submitted by the newly appointed Enquiry Officer on 17.10.2012. The specific conclusion even in the second enquiry report is that charges made against the petitioner in the charge memo dated 30.09.2010 are not proved.

5. The Officer on Special Duty in the Rural Works Department has thereafter, communicated the second show cause notice to the petitioner on 13.05.2013. Since the same did not disclose any points of difference with the report submitted by the Enquiry Officer, the petitioner objected to such second show cause notice and requested the authorities to acquit him from the charges levelled against him by submitting his response which received before the Officer on Special Duty on 02.07.2013. Thereafter, another second show cause notice was issued to the petitioner on 26.02.2014 for the second time. This time the disciplinary authority has communicated some opinion purporting to be the points of difference with the enquiry report dated 17.10.2012 whereby the charges were held not proved against the petitioner. The opinion of the disciplinary authority purporting to be the points of difference is as follows :



मंतव्य

संचालन पदाधिकारी द्वारा अपनी जाँच में इस तथ्य की पूर्णतः अनदेखी की गई है कि श्री सिंह को निगरानी विभाग के धावा दल द्वारा दस हजार रुपये रिश्वत लेते हुए रंगे हाथ पकड़ा गया तथा यह कार्रवाई दो स्वतंत्र गवाहों के सामने की गई।

इस प्रकार संचालन पदाधिकारी द्वारा दिया गया प्रतिवेदन आरोप के मूल प्रकृति से अलग है। श्री सिंह के रंगे हाथ पकड़े जाने से संबंधित मामला न्यायालय में विचाराधीन है।

अतएव संचालन पदाधिकारी के मंतव्य से सहमत नहीं हुआ जा सकता है।

6. Bare perusal of the aforesaid opinion of the disciplinary authority shows that the same does not communicate any points of difference on which the response can be submitted. It only narrates the allegation made in the criminal case and the fact that the petitioner has been arrested in presence of two independent witnesses. The same is not with reference to any evidence brought on record in the proceedings before the Enquiry Officer. The opinion of the Disciplinary Authority is not in accordance with the procedure prescribed under Rule 18 (2) of the Bihar CCA Rules, 2005 which provides :

“18(2). The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), 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.”



7. Here it would be relevant to notice that the Enquiry Officer on both the occasions had come to a findings regarding the charges not capable of being proved since the matter was pending in investigation in the criminal trial and that other than documents relating to the criminal trial which were enclosed along with the charge-memo, no evidence has been produced to support the charges against the petitioner.

8. The Enquiry Officer, therefore, concluded The proceedings with findings of no evidence. In absence of any evidence, the report of the Enquiry Officer appears to be correct.

9. Even though no reasons for differing with the findings of the Enquiry Officer has been assigned, the petitioner has submitted his response on 24.03.2014 to the second show cause notice highlighting the infirmities. The disciplinary authority thereafter, has issued order dated 09.04.2014 reducing the petitioner's pension to zero. Under the order passed by the disciplinary authorities on 09.04.2014, the petitioner has been deprived of his pension. The reasons assigned by the disciplinary authorities in the order dated 09.04.2014 are as follows:-

“श्री सिंह द्वारा समर्पित द्वितीय कारण पृच्छा की समीक्षा विभाग द्वारा की गई। समीक्षोपरांत यह पाया गया कि उनके द्वारा दूरी के आधार पर गवाह को स्वतंत्र नहीं माना गया। परंतु मात्र दूरी किसी गवाह के स्वतंत्र नहीं होने का पैमाना



नहीं हो सकता। उनके द्वारा इस संबंध में कोई अतिरिक्त साक्ष्य नहीं दिया गया। धावादल द्वारा इस मामले में श्री सिंह को रि"वत लेते हुए रंगे हाथ गिरफ्तार किया गया। इस तथ्य को भी इस आधार पर नैकारी नहीं जा सकता है कि इसमें परिवादी द्वारा साजि"ा रची गई। अतः इस मामले में आरोपी पर लगाया गया आरोप प्रमाणित होता है।”

10. Bare perusal of the reasons assigned by the disciplinary authority would show that other than relying upon the records of the criminal trial to the extent that it is alleged against the petitioner that he was arrested in presence of two independent witnesses, no evidence whatsoever has been referred to in relation to the departmental proceedings. Even the two alleged independent witnesses in presence of whom the petitioner is alleged to have been arrested have not been produced in the enquiry before the Enquiry Officer to sustain the charge against the petitioner. The same is evident from bare perusal of the enquiry report wherein no persons have been produced to support the allegations against the petitioner.

11. Petitioner has specifically averred in his writ petition that no departmental witnesses have been examined in support of any documents including the documents which are part of the criminal investigation and which have been enclosed along with the charge memo, such assertion has not been denied by the respondents in their counter affidavit.



12. The assertion of the petitioner is reliable since neither the two enquiry reports nor the order passed by the Disciplinary Authority dated 09.04.2014 shows that there is any oral evidence in support of the four documents which have been enclosed along with the charge memo. In the charge memo out of the four documents produced along with the charge memo three are part of the criminal investigation and the fourth is a relevant extract of the legal provisions. Such documents cannot be considered to be a valid piece of evidence against the petitioner. The same stands decided in the case of *Roop Singh Negi vs. Punjab National Bank* reported in (2009) 2 SCC 570 more specifically paragraph 14.

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. ”

13. The documents which form the part of the criminal



investigation in light of the aforesaid decision of the Apex Court cannot by any stretch of imagination be taken to be a valid piece of evidence against the petitioner in the instant proceedings.

14. From perusal of the enquiry report and the order passed by the disciplinary authority it is evident that other than the said documents no other documents have been produced in the entire proceedings. It is also apparent that not a single witness has been examined in support of the allegations against the petitioner in the proceedings. The specific assertion of the petitioner that no persons have been examined in support of the case against the petitioner is also not denied by the respondents in their counter affidavit.

15. In view of the findings arrived at herein above on the basis of the records of the proceedings in the instant case, the irresistible conclusion is that the order dated 09.04.2014 passed by the Special Secretary Rural Works Department purporting to withhold the pension of the petitioner is crossly illegal and arrived at in violation of the Principles of Natural Justice and is unsustainable in the eye of law. The order of punishment therefore, has to be quashed.

16. During pendency of the case the petitioner's appeal filed against the order of punishment has been rejected by order dated 26.05.2015 by the Secretary Rural Works Department. As a result of quashing of the order of punishment dated 09.04.2014, the order dated



26.05.2015 passed in the appeal which is also impugned in the instant writ petition by filing I.A. No. 8905 of 2017, is also quashed.

17. As a result of quashing of the impugned order the petitioner will be entitled to restoration of his pensionary benefits and all other consequential benefits available in law.

18. The writ petition is allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

