

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1625 of 2015

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Abid Iqbal, son of Sri Rahmat Ali, resident of village & P.O.- Bharatpura, P.S.-
Gautam Budh Nagar (Tarwara), District- Siwan **Petitioner**

Versus

1. The State of Bihar
 2. The Secretary, Building Construction Department, Bihar, Patna
 3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary,
Building Construction Department, Bihar, Patna
 4. The Joint Secretary-cum-Special Work Officer-cum-Chief Vigilance Officer,
Building Construction Department, Bihar, Patna
 5. The Chief Engineer, North, Building Construction Department, Bihar, Patna
 6. The Superintending Engineer, Building Circle, Saharsa
 7. The Executive Engineer, Building Division, Sasaram
 8. Sri Vikrama Prasad, Enquiry Conducting Officer-cum-Executive Engineer,
Building Division, Gaya **Respondents**
- =====

Appearance :

For the Petitioner : Mr. Arun Kumar, Advocate

For the Respondents : Mr. Nagendra Prasad Yadav, SC 23,
Vijaya Laxmi Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-05-2018

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

2. Charge memo dated 21.5.2010 (Annexure 2) was issued to the petitioner who was a Junior Engineer in the Building Construction Department. Allegations were arising out of petitioner's arrest in Vigilance Police Station Case No. 026 of 2009. Relying upon the Pre trap, Post tarp memorandum, the FIR, Complaint, Verification Report and other such documents which all form part of the criminal proceeding, the petitioner was sought to be proceeded against.

3. Learned counsel for the petitioner relying upon the documents, which have been enclosed with the charge memo, which



are under covering letter dated 25.3.2009 (Annexure 3) issued by the Superintendent of Police, Vigilance to the Secretary, Building Construction Department submits that it would be apparent that veracity of the documents which are sought to be relied upon, are subject to outcome of the investigation. Relevant extract of the allegation is re-produced herein below:-

“मो० आबिद इकबाल, कनीय अभियंता, भवन निर्माण विभाग, सहरसा को क्रम”1: 24,000/- (चौबीस हजार रुपये) 1,000/- (एक हजार रुपये) एवं 10,000/- (दस हजार रुपये) रि”वत लेते रंगे हाथों गिरफ्तार कर न्यायिक हिरासत में भेजा गया है। यह कांड सम्प्रति अनुसंधानांतर्गत है। अनुसंधानोपरान्त फलाफल से अवगत करा दिया जाएगा।”

4. In the aforesaid circumstances, the petitioner is sought to be proceeded against. Pursuant to the enquiry, one enquiry report dated 6.6.2013 (Annexure 6 & 7) was submitted. The same was to the extent that the charges against the petitioner were not proved. In purported exercise of power under Rule 18(1) of the Bihar CCA Rules, 2005, the Disciplinary authority while differing with the enquiry report has directed the Enquiry officer to conduct enquiry afresh vide communication dated 11.7.2013 (Annexure 8). The second enquiry report dated 20.3.2014 (Annexures 11 & 12) was thereafter submitted. Again, the enquiry report which was submitted by the Enquiry officer dated 20.3.2014 does not record any finding of



the charges being proved against the petitioner. The findings of the Enquiry officer in the second enquiry report are as follows:-

“निष्कर्ष :- प्रस्तुतीकरण पदाधिकारी का प्रतिवेदन सह मन्तव्य के अनुसार यह मामला निगरानी दल द्वारा रि”वत लेते पकड़े जाने का आरापी है। अतएव आग्रह है कि इस पर अपने स्तर से विधि संगत निर्णय लेना चाहेंगे।”

5. Thereafter it appears that on submission of the second enquiry report, the Disciplinary authority has taken two simultaneous steps in the matter. On the one hand, he has written to the Enquiry officer under his letter dated 2.4.2014 (Annexure 13) calling for an explanation as to why the enquiry report with clear and definite findings was not submitted.

6. At the same time, the Disciplinary authority, realising that there is no findings of the Enquiry officer, has on the same day issued a notice purported to be the second show cause notice dated 2.4.2014 (Annexure 14). In the said notice, no point of disagreement with the findings recorded by the Enquiry officer has been communicated to the petitioner. The same is clearly not in accordance with the provisions of Rule 18(2) of the Bihar CCA Rules. No point of disagreement has been recorded nor tentative finding has been given so as to enable the petitioner an opportunity of making his reply to the second show cause. The petitioner has thus been deprived of his opportunity to convince the Disciplinary



authority to agree with the findings recorded by the Enquiry officer. Such procedure adopted by the Disciplinary authority shows the predetermined mind of the Disciplinary authority as the second show cause notice is without even considering the enquiry report submitted by the Enquiry officer.

7. Another aspect of the matter is that the notice allowed 15 days time to the petitioner for explaining his defence by submitting the show cause.

8. Specific case of the petitioner is that he received the second show cause notice dated 2.4.2014, issued by the Disciplinary authority, on 15.4.2014. Petitioner's counsel submits that he has responded to the same within 15 days of receipt of the same, i.e., by submitting his second show cause on 24.4.2014.

9. Learned counsel for the respondent State, however, submits that since the notice provided 15 days time from the date of issuance of notice, the petitioner was to submit his response by 17.4.2014. Notice did not grant him time to respond within 15 days from the date of receipt of the same. Relying on such technicality, it is argued that had the petitioner submitted his response within time, the same would have been considered and order of punishment dated 28.4.2014 (Annexure 18) which has come to be issued against the petitioner, could have been avoided and the matter considered by the Disciplinary authority with reference to the second show cause



submitted by the petitioner.

10. The notice dated 2.4.2014 did not comply with the requirement under Rule 18(2) of the Bihar CCA Rules, 2005. Even otherwise, response of the petitioner was not considered by the respondent authority, namely, the Disciplinary authority on the mere technicality that the same did not arrive within time specified in the notice dated 2.4.2014.

11. This Court would find that the specific right of the petitioner for consideration of his response to the notice dated 2.4.2014 could not have been denied since the response had been received by the authorities on 24.4.2014, i.e., 4 days before order of punishment was issued against him. The order of punishment which has been issued to the petitioner is without reference to his response which was received and in possession of the respondent authorities while issuing order of punishment dated 28.4.2014 which is challenged in the instant writ petition.

12. Since, it has already been concluded by this Court that the second show cause notice dated 2.4.2014 otherwise also did not comply with the provisions of the Bihar CCA Rules, 2005, interest of justices would be served by quashing order of punishment dated 28.4.2014 (Annexure 18), since the same also suffers from non consideration the petitioner's response to second show cause which was received on 24.4.2014.



13. The Disciplinary authority may proceed from the stage after submission of the second enquiry report dated 20.3.2014, in accordance with the procedure under Rule 18 of the Bihar CCA Rules, 2005. The petitioner, as a result of quashing of the order of punishment in light of the observations made herein above, would be deemed to be under suspension and proceeding may continue from the stage after submission of the second enquiry report dated 20.3.2014.

14. The Disciplinary authority would be obliged to take a final decision in accordance with law and conclude the proceedings expeditiously, after considering the petitioner’s response to the second show cause notice dated 2.4.2014, which was received by the Disciplinary authority on 24.4.2014.

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

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.06.2018
Transmission Date	NA

