

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1678 of 2015
IN
Civil Writ Jurisdiction Case No. 3356 of 2015**

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Chaudhary Vijay Kumar Sharma Son of - Late Jagdish Sharma, Resident of village-
Jhakhra, P.S- Piprakothi, District- East Champaran.

.... Appellant

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary cum Commissioner, Department of Water Resources, Sinchai Bhawan, Patna.
3. The Deputy Secretary, Water Resources Department, Govt. of Bihar Patna.
4. The Engineer-in-Chief, Water Resource Department, Sinchai Bhawan, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rajeev Ranjan, Adv.

For the Respondent/s : Ms. Nutan Sahay, AC to AAG 12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 16-08-2018

Heard the parties.

This intra-Court appeal arises from a judgment and order of learned Single Judge dated 23.06.2015 passed in C.W.J.C. No. 3356/2015, whereby he has refused to exercise his discretion, to dismiss the writ petition.

Before we proceed to discuss the issue raised by the appellant-writ petitioner for questioning the order of learned Single Judge, we deem it appropriate to notice the bare essential facts leading to the writ petition as it transpires from the writ proceeding.



While the petitioner was posted as a Junior Engineer, Swarn Rekha Canal Division in Chandil during the period 1989-1992 and was allotted supervisory work that on an allegation made on the quality of work executed under his supervision, he was suspended and proceeded departmentally. The allegation of misconduct against the petitioner was upheld by the disciplinary authority, who imposed a punishment of reduction to the minimum scale of pay, which was questioned by him in CWJC No. 6358/2006. The said writ petition was heard analogous with another writ petition. The learned Single Judge took notice of the foundation for initiation of the disciplinary proceeding which rested entirely on a report of flying squad which took measurement of the work executed ex-parte and in absence of the petitioner. The learned Single Judge also took notice of the fact that when the report was opposed by the petitioner that a fresh inquiry team was constituted but it refused to reinvestigate the matter because one of its members was also a member of the flying squad. Resultantly, no further action was taken for holding a second enquiry. Despite such position, the petitioner was imposed with punishment of reduction to minimum scale of pay.

The learned Single Judge has also noted that apart from the report of the flying squad there was an arbitral award between the contractor and the State and while the loss estimated by the flying



squad was Rs. 7.5 crore, the arbitral award quantified it at Rs. 31 lakhs. The learned Single Judge taking note of the fact that the two estimations were difficult to be reconciled as well as the absence of explanation why the re-inspection as directed, did not take place, held the proceeding vitiated because the only material on record was an ex-parte report of the flying squad which conducted the measurement behind the back of the petitioner who got transferred out by the said time. Consequently not only the disciplinary order but also appellate order was quashed.

The learned Single Judge also took notice of the order of appellate authority which was non-speaking and did not consider the issues raised by the appellant petitioner. A copy of the judgment and order of the learned Single Judge in CWJC No. 6358/2006 is enclosed at Annexure-12 to the writ proceedings.

Feeling aggrieved the State went in appeal bearing L.P.A. No. 374/2013 which was heard analogous with other appeals and a Division Bench by partially upholding the view of the learned Single Judge, that the appellate order was non-speaking, chose to remit the matter for fresh consideration and disposal by the appellate authority. This order is enclosed at Annexure-13 to the writ petition.

It is following the remand and with no change in circumstance that the appellate authority has passed the order



impugned in the writ petition bearing no. 885 dated 08.07.2014 impugned at Annexure-14 and feeling aggrieved the petitioner moved in writ jurisdiction which has been dismissed and hence, this appeal.

Mr. Rajeev Ranjan, learned Counsel for the petitioner, has submitted that once the matter was remitted to the appellate authority by the appellate Court, all issues noted by the Writ Court on the submission made by the petitioner in opposition of the punishment order, had to be examined but has been given a go-bye. He submits that except for the report of the flying squad, which was ex-parte and conducted behind the back of the petitioner, there was no other material before the disciplinary authority to support the alleged charge. He submits that despite re-enquiry ordered for re-measurement, no second measurement was conducted and thus, since the punishment order is resting exclusively on an ex-parte report of the flying squad, it can not be a basis for punishment.

Learned Counsel for the State simply relies on the reasoning present in the impugned order for supporting the order of penalty.

We have heard learned Counsel for the parties on the issue raised and we are surprised to note that neither does the counter affidavit explain why the 2nd enquiry has not been carried out nor do the impugned orders passed by the authorities, give any answer to the issue raised.



We do note that the entire proceedings is resting on an ex-parte report of the flying squad and the respondents having realized this position and having issued direction for a fresh enquiry and measurement, yet no subsequent measurement was carried out and which has persuaded the learned Single Judge to quash, not only the punishment order as well as the appellate order in the earlier round of proceedings as discussed above and even in the intra-Court appeal, the appellate Court was pleased to remand the matter to the statutory authority for examining the issues so raised by the petitioner in appeal. We note that the issue raised by the petitioner herein, though was taken note of by the appellate authority but, he has again committed the same error in relying upon the ex-parte report of the flying squad.

The legal position in this regard is well settled and a report of a flying squad even if, be a relevant material for acceptance as evidence in a departmental proceeding, unless it is carried out with due compliance of the principles of natural justice; withstands the test of veracity and is proved during enquiry, it can not be used or relied upon or form a basis for a punishment order.

It is undisputed that the report of the flying squad was prepared in absence of the petitioner and the measurement was carried out ex-parte. It is again not in dispute that though a re-enquiry was



directed but was never carried out. In other words if the report of the flying squad is removed from the list of evidence, there is nothing on record to support the allegation against the petitioner. As already observed, the legal position in this connection is well settled and a report of a Flying Squad on the work executed, unless prepared with due observations of the principles of natural justice allowing participation of all connected therewith including the delinquent and unless tested on its veracity in the disciplinary proceeding in the manner required, can not be treated sacrosanct for holding anyone guilty much less imposition of penalty.

A similar view was taken by a Division Bench of this Court while expressing opinion on a similar matter reported in 2009(3) PLJR 988 (The State of Bihar vs. Horil Sahni). The evidentiary value of a report of flying squad and the extent to which it can be relied upon for imposition of a punishment, is eloquent from the position explained by the Division Bench.

The situation is worse here because the 1st enquiry was ex parte and despite decision to hold 2nd enquiry, no second enquiry was ever carried out.

In the undisputed circumstances noted, the proceedings resting on ex-parte report of the flying squad can not form basis for the punishment and if this only piece of evidence is removed, the



order of penalty would rest on no other evidence. We are thus in respectful disagreement of the opinion expressed by the learned Single Judge in the judgment and order passed in CWJC No. 3356/2015 which is accordingly set aside.

Consequently we are persuaded by the argument of Mr. Rajeev Ranjan, learned Counsel for the petitioner, to hold the punishment orders resting on no evidence and consequently the order of penalty bearing memo no. 649 dated 17.06.2005 impugned at Annexure-9 as affirmed by the appellate authority vide order dated 15.12.2005 impugned at Annexure-11 are quashed and set aside.

The writ petition is allowed with all consequential reliefs to which the petitioners is found entitled and which should be provided within three months of receipt/ production of a copy of this judgment.

The Letters Patent Appeal is allowed but with no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Archana/Surendra

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.09.2018
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