

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8882 of 2013**

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Babu Ram Singh Son Of Bhuti Singh Resident Of Village - Rajpur, P.S. Rajpur,  
District – Rohtas ..... Petitioner

Versus

1. The State Of Bihar, Through The Principal Secretary, Water Resources Department, Government Of Bihar, Patna
  2. The Engineer - In - Chief, (Central) Water Resources Department, Government Of Bihar, Patna
  3. The Deputy Secretary, Water Resources Department, Government Of Bihar, Patna ..... Respondents
- =====

**Appearance :**

For the Petitioner : Mr.Arun Kumar, Subodh Kumar, Md.H.Azad,  
Sandhya Kri.Sinha, A.Kishore Sinha, Advocates

For the State : Mr.Sanjay Kumar, AC to AAG 4

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date: 21-06-2018**

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

2. The petitioner has been proceeded against vide charge memo which has been communicated to him by letter dated 3.8.2010 (Annexure 6), issued by the Engineer-in-chief (Central), Water Resources Department, Government of Bihar, Patna. The allegation made in the charge memo is based on the petitioner's implication in a vigilance case constituted on the basis of the complaint made by a contractor Mithlesh Kumar Singh. The allegation in the graft case was that the petitioner has demanded an amount of Rs.50,000/- being 10% of Rs.5 lacs which was being paid to the said contractor for some work undertaken by him. In



respect of said allegation, the petitioner was arrested by the vigilance team on 27.4.2010 upon being found receiving an amount of Rs.50,000/- from the said Mithlesh Kumar Singh. Charge memo was issued to the petitioner vide 'Praptra Ka' alleging that since he was caught red hand while taking a bribe of Rs.50,000/- on 27.10.2010 from the said Mithlesh Kumar Singh and was taken into custody, his conduct was unbecoming of a Government servant. The only evidence which has been communicated vide charge memo issued to the petitioner is the communication dated 3.5.2010 bearing Memo no. 798 which is a communication issued by the Superintendent of Police, Vigilance Department, Investigation Bureau to the Principal Secretary, Water Resources Department, Bihar. Said letter is a communication regarding petitioner's implication in the said case and an institution of the FIR for the offence under various sections of the Prevention of Corruption Act and regarding institution of Vigilance Police Station Case no. 034 of 2010 dated 27.4.2010. FIR and such some other documents forming part of criminal investigation regarding petitioner's arrest have been communicated under the said Letter dated 3.5.2010.

3. The petitioner, thereafter, has been subjected to proceedings. On 1.6.2011, the Enquiry officer intimated the Deputy Secretary, Water Resources Department, Patna that he being a



technocrat engineer is not the proper person to conduct the departmental proceeding as the enquiry officer and the same should be given to any person having some legal background for completing the departmental proceeding as he does not consider himself to be competent to continue the proceedings in respect of the charges contained in charge memo dated 30.10.2010.

**4.** Upon insistence of the Disciplinary Authority, the same Enquiry officer again submitted enquiry report dated 27.8.2011. The second enquiry report was submitted by the Enquiry officer, i.e., the Technical officer, Jal Path Anchal, Gaya, communicating the opinion of the Executive Engineer, Tilaiya Canal Division, Wazirganj, where the petitioner was posted at the relevant time, that the petitioner is known for his efficient discharge of duties and good behaviour.

**5.** The second enquiry report also does not seem to have come up to the expectation of the Disciplinary Authority. Again upon insistence of the Disciplinary Authority, the third enquiry report which is dated 30.12.2011 (Annexure 21) has been submitted in respect of the charges against the petitioner.

**6.** The third enquiry report dated 30.12.2011 has been submitted without conducting any proceeding on any date after submission of the second enquiry report. Specific submission to



this effect has been made in paragraph 34 (iv) of the writ petition, to which a very vague assertion has been made in the counter affidavit that they do not appear to be sustainable.

7. The enquiry report is also unsustainable in law inasmuch as the same is not with reference to any evidence or material produced before the Enquiry officer. Even the complainant Mithlesh Kumar Singh has not been examined. No witness has been examined in the proceedings before the Enquiry officer before submission of the third enquiry report. Same has been submitted merely on the basis of the communication of the vigilance investigation department dated 3.5.2010 which is nothing but communication regarding institution of the FIR and containing enclosures like the Pre/post trap memorandum, verification report. Apart from these documents nothing has been place to bring home the charge made against the petitioner in the charge memo dated 30.10.2010.

8. Learned counsel for the petitioner has submitted that the law is clear in this regard is very clear that FIR, Pre trap memorandum, post trap memorandum, the verification report of the complaint made by the contractor, cannot itself be deemed to be any evidence in the eyes of law. All these documents are only for the scrutiny in the criminal proceeding which is yet to be decided.



Reliance has been placed on the judgment of the Hon'ble Apex court in case of **Roop Singh Negi Vs. Punjab National Bank** and others, reported in **(2009) 2 SCC 570**.

**9.** The said submission of the petitioner is correct and found worthy of consideration by this Court. From the third enquiry report, it is quite clear that no document has been produced on the basis of which charges can be said to have been proved.

**10.** The issue has been agitated by the petitioner in his reply submitted to the second show cause dated 24.4.2012 as well as the supplementary reply on 1.6.2012 (Annexure 23). The petitioner has raised all the points elaborately before the Disciplinary Authority in response to the second show cause notice, but none of the contentions of the petitioner has been considered by the Disciplinary Authority. The elaborate response of the petitioner has not been considered by the Disciplinary Authority and or non speaking and cryptic order dated 5.7.2012 (Annexure F to the counter affidavit) has been passed awarding the punishment of dismissal from service.

**11.** Learned counsel for the petitioner submits that the order of the Disciplinary authority is without considering any of the contentions raised by the petitioner and without assigning any reason. It is bereft of merit and without considering anything on



record, documentary or oral. The dismissal order has thus been passed in violation of Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as 'the Bihar CCA Rules, 2005').

**12.** The third enquiry report submitted by the Enquiry officer is apart from being not fair and in violation of principle of Natural justice, also contrary to the prescribed procedure under Rule 17 of the Bihar CCA Rules, 2005.

**13.** Further contention of the learned counsel is that the petitioner thereafter preferred an elaborate appeal before the Principal Secretary, Water Resource Department, Government of Bihar on 30.7.2012 raising all these procedural irregularities committed in the proceedings for consideration of the Appellate Authority with reference to various judicial pronouncements in support of his contention. The appeal, being such a vital right of the petitioner, has been rejected by the Appellate Authority by an order dated 8.3.2013 (Annexure G to the counter affidavit) after reproducing background of the case. The conclusion of Appellate Authority is bereft of any reason, and shows total non application of mind.

**14.** Learned counsel for the State has submitted that the petitioner has been charged of being involved in serious allegation



of corruption. He has been subjected to a proceeding and afforded opportunity. Petitioner cannot be shown any leniency in the matter looking at gravity of allegations.

**15.** Three enquiries have been called for by the Disciplinary Authority, third enquiry report being palatable to the Disciplinary Authority, has been accepted. But the same is without reference to any evidence. In a most mechanical way without considering any of the contentions made by the petitioner in his response to the second show cause and without assigning any reason for rejecting the same and without reference to any material on record punishment has been awarded by the Disciplinary Authority. The respondent authorities appear to have proceeded in the most casual manner. The Disciplinary Authority has also not considered the issues in accordance with law as noted above.

**16.** In this regard, this Court would refer to a Division bench decision of this Court rendered in case of **Hassan Muzahid Vs. The Bihar State Electricity Board and others**, reported in **2015(4) PLJR 435 (HC)** in which it has been held that the order passed by the Disciplinary Authority without considering the grounds pleaded by delinquent employee in his reply to the second show cause and without assigning any reason in support of the decision is violative of the principles of natural justice.



**17.** Order passed by the Disciplinary Authority is contrary to the procedure prescribed in Rule 18 of the Bihar CCA Rules, 2005 in exercise of power by the Disciplinary Authority. Order is bereft of any reason and without reference to any material. The conclusion by the enquiry officer as well as the Disciplinary Authority are unsustainable for the reasons indicated above. Order of punishment issued by the Disciplinary Authority, i.e. the Engineer in chef, Water Resources Department under order dated 5.7.2012 is therefore quashed.

**18.** Even the appellate authority has affirmed the dismissal order without considering petitioner's elaborate appeal which has been filed by the petitioner raising the apparent irregularities committed in conducting the departmental proceeding against him. The appellate order dated 8.3.2013 is also bereft of any reason, as such, the same is also unsustainable in law and is therefore quashed as this order is also illegal and contrary to the provisions of the Bihar CCA Rules, 2005 inasmuch as the same has been disposed of contrary to the procedure prescribed for exercise of appellate jurisdiction in Rule 27 of the Bihar CCA Rules, 2005. As a result of the quashing of the dismissal order as well as the appellate order, the petitioner would be entitled to consequential benefits.

**19.** Learned counsel for the State submits that liberty may



be granted to the petitioner to proceed against the petitioner afresh.

**20.** Needless to record that the State may proceed against the petitioner in accordance with law.

**21.** The writ petition is allowed to the extent indicate above.

**(Madhuresh Prasad, J)**

Shashi.

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