IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 5529 of 2013

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Krishna Chandra Pradhan S/O Late Lakshmi Pradhan R/O Ashoka Place, Exhibition Road, Police Station- Gandhi Maidan, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar through Secretary Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
2. The Joint Secretary Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
3. The Special Secretary Water Resources Department (Irrigation), Sinchai Bhawan, Patna
4. The Deputy Secretary Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
5. Accountant General, Bihar, Birchand Patel Path, Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Mrigank Mauli, Sanket, Sanjay Kr, Prince Kr Mishra, Advocates

For the Respondent/s : M/s Ravindra Kr, Manish Kr, ACs to AAG VI

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

<u>ORAL JUDGMENT</u>

Date: 18-07-2018

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

2 One charge memo dated 07.10.1991 was issued to the petitioner. The substance of the allegations made against the petitioner was that while he was posted as Executive Engineer at the North Koel Mechanical Division, Palamau, on a false pretext and by creating false document under a conspiracy, he had given the indent for purchase of 200 chokes for Sodium Vapour Lamps of 250 Watts. It is alleged that as per Clause – II of the Purchase Order, it was required that before making payment to the supplier who, in this case, was M/s Sky Master, Cinema Road, Hajipur, the up to date income tax and sales tax maintenance certificates were required to be verified. It is alleged that the petitioner failed to obtain the two certificates and that had he taken the two certificates then payment to the fictitious person by the name of P K Singh would not have been possible. The other part of the allegation against the petitioner is that bank draft was prepared in the name of the supplier. However, the address of the firm, namely, M/s Sky Master, Cinema Road, i e, “Hajipur” was not mentioned and the draft was made payable at Patna.

3 On the basis of such allegations, the petitioner was proceeded against. He appeared before the Enquiry Officer, submitted his defence and the proceedings were conducted by the Enquiry Officer. Referring to the Enquiry Report dated 13.12.1991 (Annexure 3 to the writ petition), it is submitted by learned counsel for the petitioner that there was no Presenting Officer. No evidence, either documentary or oral, was brought before the Enquiry Officer in support of the charges. The proceedings have been conducted by the Enquiry Officer and the Enquiry Report has been submitted to the effect that the charges against the petitioner could not be proved. It is also pointed out by the petitioner that even in the charge memo, there was no reference to evidence, either documentary or oral on the basis of which the Department proposed to sustain the charges in the proceedings. Essence of the submission made by the learned counsel for the petitioner is that it is a case is of no evidence. The same is quite apparent from the proceedings in the writ records which have concluded in submission of the Enquiry Report in favour of the petitioner.

4 The matter remained pending for more than five years. Thereafter, Authorities issued a second cause on 07th September, 1996. The Disciplinary Authority proposed to differ with the findings of the Enquiry Officer and issued show cause, against the proposed punishment of withholding of promotion for ten years and recovery of proportionate amount from the petitioner for unutilized material. The petitioner, thereafter, moved this Court by filing *CWJC No 7535 of 1998*. The same was allowed by this Court under order dated 03.11.1999 regarding the proposed punishment and considering the entire proceedings till that stage, this Court came to a finding as follows:

> *"9. In the present case, there is nothing on the record to suggest that the petitioner caused pecuniary loss to the State for his negligence or breach of order of the higher authority, nor such allegation was levelled against him. Neither such finding given by the authority nor such ground has been shown in the impugned notification. Thereby, there was no occasion for the State to recover any amount from the salary of the petitioner.*

10. Accordingly, I set aside the notification of punishment dated 22nd September, 1997 with direction to the authorities to refund the amount, if any, adjusted in pursuance of the impugned notification; immediately, but not later than a period of three months from the date of receipt/production of a copy of this order.

11. The writ petition is allowed with the aforesaid observations and directions."

5 The State went in appeal by filing *LPA No 98 of 2000*. The order passed in the writ petition was not interfered with. However, the matter was remitted to the State authorities to reconsider the same. While granting liberty, Division Bench had recorded a finding that the approach of the State was contrary to the well settled principles of law and that in a case where the Disciplinary Authority proposes to differ with the findings of the Enquiry Officer, he was required to communicate the tentative ground for the said disagreement and only after giving opportunity of hearing on the points of disagreement, the final order could have been passed by the Disciplinary Authority. In view of the matter being remitted back by the Division Bench of this Court in *LPA No 98 of 2000*, the respondent-authority issued the second show cause to the petitioner and once again proceeded against the petitioner in the same manner which had been earlier deprecated in the writ proceedings arising out of *CWJC No 7535 of 1998* and *LPA No 98 of 2000*. In the circumstances, the petitioner was again compelled to approach this Court by filing *CWJC No 10530 of 2003* and after hearing the parties, this Court, with reference to the second show cause which was Annexure 11 in the said proceedings, had observed as follows:

> *"Learned counsel for the State, after going through Annexure 4 & Annexure 11, was unable to say anything. He virtually had to concede that paragraph 3 of Annexure 4 and paragraph 2 of Annexure 11 are verbatim the same. He, however, submits that the findings recorded in Annexure 11 are proposed findings and therefore there is nothing wrong in the said Annexure 11.*
>
> *After hearing learned counsel for the parties, I must immediately record that the reasons given in Annexure 4 which were disapproved by this Court have been repeated verbatim in Annexure 11. Not only this, the last line in paragraph 2 of Annexure 11 records a finding that the petitioner has been found guilty. When this Court directed the Department first to issue a show cause notice along with the tentative grounds to differ and thereafter record a finding into the delinquency of the delinquent officer then without giving a show cause notice, a finding into the misconduct of the petitioner could not be recorded. Annexure 11 shows non-application of mind and in fact records a finding on the subject in relation to which the show cause notice itself was issued."*

6 The second show cause as also the punishment imposed thereupon was, therefore, quashed by this Court in the proceedings arising out of *CWJC No 10530 of 2003* by order dated 26.09.2003. Once again, the directions issued in *LPA No 98 of 2000* were reiterated and allowing the writ petition, the respondents were allowed to proceed in accordance with law.

7 This time, the respondents issued a second show cause which is dated 03.09.2004 against the petitioner (Annexure 16 to the writ petition). The petitioner submitted his detailed response to the same on 20.09.2004. The same is Annexure 17 to the instant writ proceedings. Without any consideration of the issues raised by the petitioner and in total violation of principles of natural justice, again the punishment order dated 12.11.2001 was issued whereby recovery of an amount of Rs 1.60 lacs was sought to be imposed upon the petitioner and it was directed that nothing other than subsistence allowance shall be payable to the petitioner for the period of suspension. One relevant fact is that in the meantime, the petitioner has superannuated.

8 Again, aggrieved by the manner in which the petitioner was sought to be visited with punishment without due consideration of the facts raised by him in response to the second show cause, the petitioner approached this Court by filing the writ petition bearing *CWJC No 8469 of 2005*. The petitioner’s writ petition was again allowed by order dated 01.07.2011 passed in *CWJC No 8469 of 2005*. Once again, this Court, in the order dated 01.07.2011, had observed that the Disciplinary Authority had passed the order of punishment dated 02.05.2005 without taking into consideration the defence of the petitioner. This Court had concluded that the finding against the petitioner was cryptic without discussing any of the grounds taken by the petitioner in his explanation and the reasons for rejecting the same. Thus, on this ground, the writ petition was allowed. The matter was left to be decided by the authority within a period of three months from the date of the order and it was specifically clarified that "the petitioner will have the liberty to raise all the points in his second show cause".

9 After the order of this Court, the Joint Secretary of the Department wrote a letter to the petitioner to appear on 02.01.2012 before the Principal Secretary in order to allow him an opportunity to defend his case. The petitioner appeared on 02.01.2012 before the Principal Secretary and presented his case. He filed a short response since the earlier reply filed by him including the reply dated 20.09.2004 in response to the second show cause notice dated 03.09.2004 was already on record in the files of the departmental enquiry before the Principal Secretary. He has highlighted the procedural lapses in the proceedings conducted against him. He has submitted that the second show cause notice dated 03.09.2014 was a post decisional hearing inasmuch as the same has recorded conclusive finding that Charge No 1 stands proved against the petitioner. He has highlighted the modus of purchase of the chokes made at the time when he was posted as Executive Engineer. He has invited the attention of the Disciplinary Authority that in fact it was the Director, Purchase and Transport who, after inviting tender, issues the order and indent for supply. The petitioner has no role to play in the identification of the supplier, acceptance of tender etc. The role of the petitioner was only to verify the up to date income tax certificate and sales tax certificate and to make payment at the time of supply being made to him. He has highlighted the fact that in fact the entire process of tender, identification of supplier, fixing of rate and such process was at the Directorate in the Secretariat at Patna. The petitioner has specifically stated that he was not at all concerned at any level of the purchase. He has also highlighted the fact that no document or evidence was produced before the Enquiry Officer in support of the charges levelled against the petitioner. As regards the preparation of bank draft for payment to the supplier, he has specifically stated that one account payee bank draft dated 19.04.1988 was prepared in favour of M/s Sky Master payable at Hajipur but only after few days, the firm returned the bank draft requesting that since their account is being operated at Patna, the bank draft may be made payable at Patna. In light of the request of the supplier, the bank draft, which was earlier issued, was cancelled and fresh account payee bank draft dated 05.02.1988 was issued to M/s Sky Master, payable at Patna. Thus, he has submitted that details/address of the payee was not changed but only Branch at which the amount was payable was mentioned at Patna. He has also informed the Disciplinary Authority that he has enclosed the Photostat copies of certificates showing clearance of income tax and sales tax. He has also pointed out that the payment was made only after the firm submitted the sales tax and income tax clearance certificates, Photostat copies of the same have been submitted with the petitioner's reply dated 03.11.1991 submitted in response to the original charge memo. Such submission of the petitioner is also corroborated by the findings of the Enquiry Officer who has specifically recorded in his enquiry report as follows:

> "श्री प्रधान द्वारा दिये गये साक्ष्य से यह स्पष्ट है कि आपूर्ति कर्ता से भुगतान से पूर्व विक्रीकर एवं आयकर चुकता प्रमाण पत्र प्राप्त कर लिया गया था अतः यह आरोप प्रमाणित नही होता है।"

10 Learned counsel for the State has submitted that the petitioner has indented the requirement, and has received the supplies while knowing well that the same could not be utilized. Such action of the petitioner clearly proves his guilt and, as such, the order of punishment against the petitioner may not be interfered with by this Court.

11 Without considering the points raised by the petitioner in his response to the second show cause, respondent-Authority has once again committed the same error, which they were committing repeatedly earlier, for which this Court had allowed the earlier 3 writ petitions of the petitioner in CWJC No 7533 of 1998, CWJC No 10530 of 2003 and CWJC No 8469 of 2005. The order of punishment dated 15.01.2013 has been issued against the petitioner by the Disciplinary Authority. The same again is a non-speaking order. Even though the Enquiry Officer, with reference to the sales tax and income tax clearance certificate, has concluded that payments were made only after the certificates were obtained by the petitioner, the Disciplinary Authority, again in the order of punishment dated 15.01.2013, has concluded that without obtaining sales tax and income tax clearance certificates, payments have been made by the petitioner. This is an example of total non-application of mind by the Disciplinary Authority while issuing the order of punishment dated 15.01.2013.

12 The said finding of the Disciplinary Authority is without reference to any material in the proceedings and is without considering the plea raised by the petitioner which had been accepted by the Enquiry Officer to conclude that only after the certificates were obtained by the petitioner regarding tax clearance, that he had authorized payments to the concerned firm. No evidence has been placed on record in support of the said charges and findings in the enquiry report in respect of the said charges are also favourable to the petitioner to the extent that the charge was not proved. The Disciplinary Authority, however, has proceeded to hold the said charges to be proved. Such exercise of power is in gross violation of the procedure prescribed under Rule 18 (2) of the Bihar CCA Rules. If the Disciplinary Authority was to record a finding contrary to the conclusion submitted by the Enquiry Officer, it was required to be with reference to evidence on record and by assigning reasons for the conclusion. This has not been done. The Disciplinary Authority, in the order of punishment dated 15.01.2013, has merely recorded the entire history of the proceedings including the details of the earlier three decisions rendered on the petitioner's earlier writ petitions. For recording a finding of guilt and award of punishment, no reasons, with reference to any evidence, have been recorded. Disciplinary Authority has only recorded:-

> "समीक्षोपरान्त सरकार द्वारा श्री प्रधान सेवानिवृत कार्यपालक अभियन्ता के विरूद्व पूर्व में संसूचित दण्ड से संबंधित विभागीय अधिसूचना सं0 – 406 दिनांक 02.05.2005 को निरस्त करने का निर्णय लिया गया एवं साथ ही सरकार द्वारा इनके विरूद्व पूर्व से संचालित विभागीय कार्यवाही को बिहार पेंशन नियमावली के नियम 43 बी0 में सम्परिवर्तित मानते हुए प्रमाणित आरोपों के लिए निम्न दण्ड देने का निर्णय लिया गया :–......."

13 Prima facie, there is no consideration of the findings recorded by the Enquiry Officer and no reasons have been recorded to abandon the conclusions in the enquiry report favourable to the petitioner. All this has been done without reference to any evidence or material on record. The exercise is in violation of principles of natural justice and fairness, apart from being violative of Rule 18 of the Bihar CCA Rules, 2005.

14 The findings so recorded are clearly perverse. Since, there was no material/evidence in support of the allegations against the petitioner. Fact that no reasons have been assigned for arriving at a conclusion, contrary to that which has been arrived at by the Enquiry Officer after due consideration, indicates towards clear perversity of the Disciplinary Authority. In view of the findings being perverse and without reference to any material/evidence whatsoever, finding to the extent that without obtaining sales tax and income tax clearance certificates, payments have been made by the petitioner, is clearly unsustainable. In this regard, this Court would only refer to the decision in the case of *Sri Swapan Ray –Versus- Indian Airlines Limited and Others, (1996) ILR 2Calcullta 32.*

15 The other findings recorded in the order of punishment dated 15.01.2013 either do not constitute a misconduct or were not a charge in the proceeding in the charge memo dated

07.10.1991. In the final order imposing punishment upon the petitioner, the Disciplinary Authority has come to a finding that even though the petitioner has made a requirement of 200 chokes, there was only requirement of 137 Vapour Lamps. The finding is that out of the 200 chokes indented by the petitioner, only 54 were to be utilized. It has, thus, been concluded that for his personal gain, the petitioner has placed an indent of 200 pieces of chokes which was more than what was actually required at the project. This finding has been arrived at even though there was no such charge against the petitioner of placing an order of higher number of chokes than what was actually required. Even otherwise, the finding in the punishment order does not show as to what was the basis for arriving at the conclusion that there were only 137 Vapour Lamps. As regards the second finding in the order of the Disciplinary Authority, it is only a facet of the first finding regarding placing an order higher number of chokes than what was actually required in the Project. The finding is that even though the requirement was submitted by the petitioner on 27.11.1987, the chokes were supplied about four and half months after the requirement was made, so he should not have received the 200 number of chokes; and by doing so, he has caused a financial loss. Another finding in the final order issued by the Disciplinary Authority is that by making bank draft in favour of M/s Sky Master, payable at

Patna show that the amount could be paid to a fake person. Such findings are without any charge to this extent in the charge memo. Other than that, this finding also has been recorded by the Disciplinary Authority without reference to any material, documentary or oral. The findings are not only baseless but also without issuing a charge memo in respect of the same.

16 Such findings of the Disciplinary Authority in respect of allegations for which no charge memo was served upon the petitioner, and where the findings are merely inferences of the Disciplinary Authority, are clearly unsustainable in law. In this connection, this Court would refer to the case of *M V Bijlani –Versus- Union of India and Others, (2006) 5 Supreme Court Cases 88*. Acting on the basis of surmises and conjectures and in absence of charge, the Disciplinary Authority cannot be permitted to record findings on the basis of which the petitioner was not charged and for which he has not been proceeded against. Such findings, without confronting the petitioner with specific charges, amount to violation of the procedure prescribed under Rule 17 (3) and (4) of the Bihar CCA Rules apart from being grossly in violation of the principles of natural justice. Findings appear to be an outcome of the preconceived notion of the authorities with respect to the petitioner's guilt in the transaction which, as submitted by the learned counsel for the petitioner, is evident from the charge memo as also the second show cause which has been issued to the petitioner after recording conclusive guilt against the petitioner. The same is a glaring example of post decisional hearing. Such hearing does not sub serve the principles of natural justice inasmuch as the premeditated mind of the authority is obvious from the charge memo and second show cause and the tendency of the authority was to somehow uphold their convictions recorded in the charge memo and second show cause and such vague, baseless findings have been recorded in the order dated 15.01.2013 which also does not constitute a charge against which the proceedings have been held against the petitioner.

17 Having considered the matter in detail, this Court is of the firm opinion that the order of punishment dated 15.01.2013 is grossly illegal and unsustainable. The same is hereby quashed and as a result of quashing the order of punishment dated 15.01.2013, the petitioner would be entitled to all consequential benefits.

18 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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