

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2457 of 2017

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Shyam Kishore Prasad, son of Late Banwari Prasad, resident of 29,
Nandanpuri Colony, Khajpura, P.S.- Rajiv Nagar, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Bihar, Patna.
3. The Additional Secretary, General Administration Department, Bihar, Patna.
4. The Joint Secretary, General Administration Department, Bihar, Patna.
5. The Under Secretary, General Administration Department, Bihar, Patna.
6. The Commissioner, Departmental Enquiry, Govt. of Bihar, Patna.
7. The District Magistrate, Madhubani.
8. The Additional Collector, Madhubani.
9. The Accountant General (A & E), B.C. Patel Marg, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Ram Binod Singh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, A.G. Mr. Ajay Kumar Sharma, A.C. to A.G.
For the Accountant General:		Mr. Kumar Priya Ranjan, S.C. Mr. Niraj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 20-11-2018

Heard learned counsel for the petitioner, learned
counsel for the State as well as Accountant General, Bihar,
Patna.

2. The petitioner is seeking a prayer for quashing the



Memo No. 14105 dated 17.10.2016 issued by the Under Secretary, General Administration Department, Govt. of Bihar, Patna, whereby by way of punishment the pension of the petitioner has been slashed to 50%. Further made a prayer for quashing the letter dated 08.12.2016 issued by the Accountant General, Bihar whereby the petitioner has been communicated that his pension is reduced to the 50% pursuant to the order of punishment. Further claimed the salary for the period from 15.07.2008 to 27.11.2008 and 19.05.2009 to 10.02.2010 that is the period the petitioner remained under suspension and further made a prayer for quashing the report dated 27.09.2015 prepared by the Commissioner, Department of Inquiry, wherein the charges have been found to be proved.

3. The petitioner entered in the Bihar Administrative Service in the year 1980, at the relevant time, posted as Land Acquisition Officer, Madhubani on 06th November, 2006. The Government of India, Ministry of Shipping, Road Transport and Highways, Department of Road Transport and Highways, started the process of acquisition of land for widening of National Highway No.57, which runs from Muzaffarpur to Purnia. Some of the part of the National Highways project is situated within the territory of Madhubani district in the State of



Bihar and the process of acquisition started under the provision of National Highways Act, 1956. As the petitioner was posted as Land Acquisition Officer, in terms of the National Highways Act, he was to consider to the objection raised by the land holders. The nature of land has been mentioned in the report submitted by Amin, Kanoongo including the Engineer, on that basis the quantum of compensation was initially decided. The land holders lodged objections with regard to nature of land, which the petitioner has decided on its merit, accordingly, the compensation amount has been paid to different land holders.

4. The Vigilance Department has received the information regarding wrong doing and payment of higher amount of compensation to the land holders making the lands as commercial, whereas the nature of land was either agricultural or residential. A Vigilance Team was constituted headed by Mr. Shekhar Kumar, Deputy Superintendent of Police-cum-Inquiry Officer, in whose leadership the team has inspected different places and found that there was inconsistency in declaring the nature of lands as the lands which were really agricultural land but the payment has been made on the basis of objection decided by the petitioner holding that the nature of lands are different. For that an FIR has been lodged against the petitioner



on the basis of the report, which has been registered vide Vigilance Case No. 02 of 2008 for offence under Sections 467, 468, 471, 477(A), 409 and 420 of the Indian Penal Code. After the institution of the criminal case, a departmental proceeding was initiated against him, issued 'Prapatra K' vide letter dated 26th September, 2008, wherein identical statement has been made that he connived with the land holders and paid the higher quantity of compensation illegally.

5. The Inquiry was handed over to the Commissioner, Departmental Inquiry, Government of Bihar, Patna, who found the charges to be proved against the petitioner, but in the meantime, the petitioner superannuated from the service, hence the proceeding was converted under Section 43 (b) of the Bihar Pension Rules. The petitioner was given the inquiry report for the purposes of objection, which the petitioner replied but ultimately the final order has been passed, thereby the pension has been reduced to 50%.

6. Learned Counsel for the petitioner submits that the inquiry report and succeeding action by way of awarding punishment, all vitiated on account of fact that the inquiry officer has recorded his finding only on the basis of inquiry report submitted by the Vigilance and there is no material



except the report of the Vigilance and on that basis the finding has been recorded by the Inquiry Officer, that led to inflictment of punishment upon the petitioner. He has further submitted that police paper cannot be said to be a piece of evidence in any manner unless the report is proved by the certain persons as witnesses, so it has no value in eye of law and that cannot be a basis for holding the petitioner guilt of the charges leveled against him. He further submits that if the department was intending to prove the charge levelled against the petitioner, then certainly some witnesses should have examined in support of the charges levelled against the petitioner including proof of inquiry report, placing reliance on the decision rendered in the case of *Roop Singh Negi Vs. Punjab National Bank & Ors.*, reported in *2009 (2) SCC 570*, wherein the Hon'ble Supreme Court has held that in the departmental proceeding it is incumbent upon the prosecution to prove the charge by way of legal evidence through oral evidence as well as proving the document which were used during the inquiry.

7. Whereas the, learned counsel for the State submits that the FIR itself is very much clear and the report itself reflects in what manner the petitioner has recklessly fixed the quantum of compensation amount in connivance with the land holders by



instigating them to file objection with respect to the amount of compensation paid to them.

8. This Court is not required to enter into the merit of the case in view of the fact that the inquiry is based upon the report submitted by the Vigilance, but one thing is very much clear that the report which is the basis for inquiry report having been not proved by any witness nor the persons who were party to the inspecting team has come forward and made a statement with regard to the allegation made in the charge-sheet. It is the duty of the prosecution to prove the charge. Merely a report or a FIR without its factual prove cannot be said to be piece of evidence and cannot be a basis to arrive to a finding of the guilt against the delinquent employee. In the present case, the situation is the same, no one has come forward to support the prosecution case nor have proved the report submitted by the Vigilance as certain persons were required to come forward and prove the charges, who could be put to cross-examination.

9. In such view of the matter, the punishment vide memo no. 14105 dated 17.10.2016, thereby the Government has communicated the petitioner regarding reduction of 50% pension as well as communication/letter given by the Accountant General Office dated 08.12.2016 and the inquiry



report dated 27.09.2015 are quashed. The matter is remanded back to the Commissioner, Departmental Inquiry, Government of Bihar, Patna, to proceed further after the stage of issuance of charge-sheet in accordance with law. The question of payment of salary as having been claimed in the writ petition will be subject to result of the inquiry proceeding. As this Court is remanding back the matter, in terms of Government Resolution 90% provisional pension will be paid to the petitioner and arrears will be subject to the result of inquiry proceeding.

10. Accordingly, this writ petition is allowed to aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	14. 12. 2018
Transmission Date	N/A.

