

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16258 of 2017

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Dinesh Kumar Chaudhary, Son of Late Sri Ramdhani Chaudhary, resident of 'Bagiya 'Awadhpuri, East Gola Road, P.O.- Danapur, P.S.- Rupaspur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
2. Joint Secretary, Water Resources Department, Government of Bihar, Patna, Sichai Bhawan.
3. O.S.D. Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
4. Deputy Secretary, Water Resources Department Government of Bihar, Sichai Bhawan, Patna.
5. Enginer-in-Chief, (Irrigation Creation), Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
6. Technical Vigilance Cell, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
7. Additional Departmental Enquiry Commissioner, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Senior Advocate Mr. Pranav Kumar, Advocate
For the Respondent/s	:	Mr. Vinay Kriti Singh -GA2 Mr. Sumant Kumar Singh, AC to GA2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 04-12-2018

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

In the present case, the petitioner is challenging the Notification bearing Memo No. 1721 dated 26.09.2017 issued under the signature of Joint Secretary, Water Resources Department, whereby and whereunder the petitioner has been imposed a major penalty by reverting the petitioner from the post



of Chief Engineer to the post of Superintending Engineer under Water Resources Department by way of disciplinary measure and further a prayer has been made to quash the inquiry report of Additional Departmental Inquiry Commissioner whereby and whereunder petitioner has been found guilty for the charges mentioned in the charge memo dated 11.03.2014 which led to institution of departmental proceeding wherein on the basis of report of Technical Vigilance Cell, Patna recorded a finding against the petitioner.

The petitioner had entered into service as Assistant Engineer in the year 1987 and, from time to time, he was promoted on the different posts and, ultimately, he achieved the post of Chief Engineer in the year 2010. He, at the relevant time, was posted as Chief Engineer, Water Resources Department, Balmiki Nagar on 11.06.2010 and later on, he was granted regular promotion on 11.05.2011 and took charge of Chief Engineer of Water Resources Department, Balmiki Nagar on 11.05.2011. The Main Western Canal Division, Balmiki Nagar was under construction, was falling in his division, was supervising the work of that construction.

In the terms of contract, specified quality of materials was to be used by contractor in carrying out the construction work. In the specification, nature of sand and stone chips to be used



while making construction for the canal has been mentioned. As per the specification, the sand was to be brought from the Sone River and stone chips was to come from Shekhpura quarry. It came to the knowledge of the department through a complaint received from a Nepali citizen that the contractor with the connivance of the Engineers had used the local material for the construction of the canal. A team was constituted for verification of the complaint, investigating team has visited the site and the facts mentioned in the complaint was found to be true, given the details of nature of material that has been used and it was found that instead of using sand of Sone River, local sand was used for the construction and also they had used of single in place of the stone bolder, which was to come from Shekhpura quarry and also they found that the work of the bitumen was not up to the mark and recorded a finding that about Rs. 20,00,00,000/- have been swindled on account of use of the local material.

An inquiry proceeding was initiated against the petitioner as he was the Chief Engineer and under his supervision the construction was made. It also appears that he had visited the site twice, submitted his report and, in his report, he did not recorded any anomalies committed by the contractor while carrying out the works. The petitioner was served with the charge-



sheet which he replied and inquiry was handed over to the Departmental Inquiry Commissioner and the Departmental Inquiry Commissioner submitted the inquiry report and arrived to a finding that he has committed the major misconduct being a Chief Engineer as well as he submitted the inquiry report wherein he has not mentioned about the nature and quality of the materials used in the construction of the canal.

This Court will not go into the merits of the case, as, well known principle of law is that the Court will examine the decision making process not the decision as the Court cannot act like an Appellate Authority over the finding recorded by the inquiry officer as well as the action taken by the Disciplinary Authority unless some perversity has taken place or such finding has been recorded in such a manner no reasonable person can arrive to such finding and certain material which are vital for consideration has been left out and immaterial fact was taken into consideration for arriving to a finding against the government servant inasmuch as findings are against the weight to evidence only on those circumstances, the Court would exercise the power of the judicial review. What has to be done or what not to be done has elaborately been dealt with the judgment in the case of *Union of India & Ors. Vs. P. Gunasekaran*, reported in (2015) 2 SCC



610, it has elaborately been given, the manner the inquiry officer has to act and to record a finding as well as the area of consideration by the High Court exercising the power in judicial review and also it is to be seen whether the finding is based on the legal evidence or recorded in ipsi dexit manner because mere production of the document without its proof cannot have a legal value in the eye of law in light of fact, if the Author of the document is not produced before the Enquiry Officer giving an opportunity to the Government servant to cross-examine the witness, it cannot take shape of the legal evidence in the eye of law. This view can be substantiated placing reliance on judgment of Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank & Ors.**, reported in (2009) 2 SCC 570. In the present case, this Court finds that finding of the inquiry officer is based upon the inquiry report submitted by the inquiry committee and the person, who had conducted the inquiry and verified the fact, was not brought before the inquiry officer so that the petitioner could have opportunity to cross-examine that witness to challenge authenticity of the report produced before the inquiry officer for the purposes of taking into consideration while arriving to a finding in a departmental proceeding and the inquiry officer without giving this opportunity has found that charges were proved



against the petitioner as has been held that he was the Chief Engineer, had submitted the report wherein there is no averment made about the nature of the material used by the contractor and that was the basis for issuance of show cause and ultimately, the disciplinary authority has passed an order against him, demoting the petitioner to the level of Superintending Engineer.

Learned counsel for the petitioner submits that the inquiry proceeding and the report cannot stand scrutiny of the fairness as it is not based upon the legal evidence as the inquiry officer has recorded his finding only on the basis of the report submitted by the Vigilance without its proof by the author, who has recorded the finding of the inquiry and in absence of production of the author for cross-examination, it has no value in the eye of law and there are other anomalies have been pointed out, not required to be dealt with, as one point is sufficient to interfere with the departmental proceeding.

Learned counsel for the State has tried to justify the action of the inquiry officer and he has submitted that the Vigilance has submitted the report on the basis of material he has found during his inspection and that too recorded by higher official, whose authenticity cannot be challenged. The State may be correct in fact but the facts brought will not have any legal



value unless brought on record following proper procedure, merely a production of document without proving the same is no evidence at all will not be the basis for the enquiry officer to record a finding against him, in view of aforesaid discussion, the finding recorded by the enquiry officer cannot be sustained as it is not based on legal evidence, cannot be basis for passing of the order of punishment of demotion.

In such view of the matter, the inquiry report (Annexure-6) as well as order dated 26.09.2017 passed by the Joint Secretary, Water Resources Department are quashed and the matter is remanded back to the inquiry officer giving direction to conduct the inquiry as per the law explained hereinabove.

With this observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/
Sunny

AFR/NAFR	NAFR
CAV DATE	NA
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