

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12900 of 2007

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RAMCHANDRA PRASAD SINGH SON OF LATE MOHAN SINGH, RESIDENT OF VILLAGE
BHAKHURUA MORE, PO DAUDNAGAR, POLICE STATION DAUGNAGAR, DISTRICT
AURANGABAD Petitioner

Versus

1. THE STATE OF BIHAR THROUGH SECRETARY, ROAD CONSTRUCTION
DEPARTMENT, VISHWESARIYA BHAWAN, BAILEY ROAD, PATNA
 2. DEPUTY SECRETARY, ROAD CONSTRUCTION DEPARTMENT, VISHWESARIYA
BHAWAN, BAILEY ROAD, PATNA
 3. DEPUTY SECRETARY CUM CHIEF VIGILANCE OFFICER, ROAD CONSTRUCTION
DEPARTMENT, VISHWESARIYA BHAWAN, BAILEY ROAD, PATNA
 4. ENGINEER IN CHIEF, ROAD CONSTRUCTION DEPARTMENT, VISHWESARIYA
BHAWAN, BAILEY ROAD, PATNA Respondents
- =====

Appearance :

For the Petitioner : Mr. Devendra Kumar Singh, Advocate
Mr. Abhay Kumar, Advocate

For the Respondents : Mr. Arun Kumar Bhagat, AC to AAG 12

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 22-03-2018

Heard learned counsel for the petitioner as well as learned
counsel for the respondent State.

2. The writ petition has been filed for quashing Office
order no. 202 dated 8.6.2007, issued by the Engineer-in-chief, Road
Construction Department (RCD), Bihar, Patna, by which the
petitioner has been dismissed from service.

3. One charge memo "*Prapatra Ka*" dated 24.6.2013 was
issued on the petitioner alleging that the petitioner while performing
official duty being posted as Junior Engineer, Sec I, Sub Division II,
RCD, Road Division, Saharsa for the period 1995-96, committed
gross misconduct by violating and disobeying departmental Circular
No. 6183 dated 9.9.1994 of RCD, Bihar, Patna by signing 11
transporter's challans of M/s COSMO Transporter, details of which



have been given in said charge memo. On such allegation, proceeding was initiated against the petitioner to which he filed his response to the charge memo by Annexure 4 dated 19.4.2006.

4. Petitioner's contention before the Enquiry officer was that the 11 challans of M/s COSMO Transporters were signed by the petitioner in pursuance of Office order dated 12.12.1997 and under the orders of the Executive Engineer. The challans were co-signed by the Executive engineer, Road Division, Road Construction Department, Saharsa. Finding of the Enquiry officer, upon going through the defence of the petitioner, was that the charges of having violated the departmental Circular dated 9.9.1994 by signing 11 transporters' challans could not be proved. Perusal of the enquiry report shows that no person was produced in support of the allegations made against the petitioner. In fact, it appears that the said departmental circular which is alleged to have been violated, has not been placed before the Enquiry officer. In the circumstances, the conclusion of the Enquiry officer with respect to the charges having been not proved appear to be correct.

5. The Disciplinary authority, differing with the findings of the Enquiry officer, by memo dated 11.1.2007 communicated a copy of the 2nd show cause along with the enquiry report to the petitioner. While communicating a copy of the enquiry report, the Disciplinary authority has considered some facts which were not



before the Enquiry officer or did not constitute part of the charge communicated by the charge memo to the petitioner.

6. It appears that relying upon some allegations, made in the criminal proceeding arising out of the CBI case Nos. RC-15(A)/97, 17(A)/97 and 18(A)/97 PAT, pending against the petitioner, certain new charges have been imported by way of 2nd show cause dated 11.1.2007 (Annexure 7) for the first time. Thus, by the 2nd show cause altogether a new charge was made out against the petitioner that 5 of the challans/receipts issued by the petitioner with respect to 51.37 Metric Tonne (MT) of Bulk Bitumen which are said to have been received by the petitioner, were forged and false. Details of the challans have been mentioned in the 2nd show cause. The Disciplinary authority, while disagreeing with the findings of the Enquiry officer, has also mentioned in his 2nd show cause that the petitioner facilitated or abated in the misappropriation of Bitumen along with M/s COSMO Transporters by signing forged and false receipts. But no charge regarding misappropriation was ever levelled/served upon the petitioners. By citing the aforesaid reason, the Disciplinary authority has differed with the findings of the Enquiry officer and issued 2nd show cause to the petitioner.

7. In his response to the 2nd show cause, the petitioner on 28.3.2007 (Annexure 8) has highlighted this aspect. The petitioner has specifically pleaded that two reasons have been assigned by the



Disciplinary authority for disagreeing with the findings of the Enquiry officer, one to the extent that there were five receipts in respect of 51.37 MT of Bulk Bitumen issued/signed by the petitioner in favour of the transporter, was false and forged and the other to the effect that the petitioner has facilitated or abated the misappropriation of Bitumen along with the transporter. These allegations actually constitute separate charges which were never communicated to the petitioner nor were ever the subject matter of the enquiry before the Enquiry officer.

8. In view of the aforesaid situation, the petitioner in his response (Annexure 8) to the 2nd show cause (Annexure 7), requested the Disciplinary officer that the charges concluded against him in the 2nd show cause cannot be taken into consideration as the said charges have not been enquired by the Enquiry officer. However, the Disciplinary authority without considering his request, awarded punishment of dismissal vide order dated 8.6.2007 (Annexure 1). Learned counsel for the petitioner submits that the impugned order of punishment has been passed in a most cryptic manner merely by recording that reply to the 2nd show cause submitted by the petitioner does not rest on facts worth consideration so as to render the charges doubtful. Order of the Disciplinary authority dated 8.6.2017 (Annexure 1) shows total non-consideration of the said plea raised by the petitioner in respect of the conclusions



regarding misappropriation and forged challangs being without any charges having been issued or inquired in respect of the same.

9. In the instant proceeding, specific case of the petitioner is that he has been awarded punishment of dismissal on the basis of the charges mentioned and concluded in the 2nd show cause, though the said charges were never enquired into by the Enquiry officer. The said charges, for the first time, occurred in the 2nd show cause by way of the reasons for differing with the findings of the Enquiry officer. The said submission made by the petitioner appears to be correct inasmuch as the charge memo does not contain any such charge regarding fraud/false receipts of the petitioner or petitioner's complicity with the transporter in misappropriation of Bitumen.

10. Specific pleas of the petitioner, in this regard, have not been denied by the respondents in their counter affidavit filed in the instant case. It can thus be concluded that the petitioner has been inflicted with the order of punishment of dismissal from service on the basis of charges which were never served on him and in respect of which no enquiry was conducted. Charges were for the first time communicated to the petitioner and concluded to be proved by the Disciplinary authority by way of reasons for differing with the findings of the Enquiry officer and without considering the petitioner's response thereto. Such order does not subserve the Principle of Natural Justice as no opportunity was afforded



to the petitioner to submit his side of the case with respect to the new allegation by framing charges in respect thereto. No proceedings have been conducted in respect of the said charges, nor any findings in respect thereof had been recorded by the Enquiry officer based on any evidence whatsoever. Even findings of the Disciplinary authority are without any basis.

11. In view of the aforesaid findings, office order dated 8.6.2007 (Annexure 1), issued by the Engineer-in-chief, Road Construction Department, Bihar, Patna (respondent no.4), whereby and whereunder the petitioner has been dismissed from service, is in clear violation of the Principle of Natural Justice and unsustainable in law and is quashed. As a result of quashing of the dismissal order, the petitioner would be entitled to reinstatement in service with all consequential benefits.

12. This order does not preclude the respondent authorities to proceed against the petitioner afresh in accordance with law.

13. The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	29.3.2018
Transmission Date	NA

