

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16593 of 2015

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Pramod Kumar Sinha, Son of Late Ram Swarup Prasad Sinha, Resident of
Mohalla- Aadarsh Nagar Road No. 2 Near Phulwari Sharif Railway Station, Police
Station- Phulwari Sharif, District- Patna Petitioner

Versus

1. The State of Bihar
 2. The Principal Secretary, Rural Works Department, Govt. of Bihar Patna
 3. The Joint Secretary, Rural Works Department, Govt. of Bihar Patna
 4. The Principal Secretary, Road Construction Department, Govt. of Bihar
 5. The Deputy Secretary (Vigilance), Road Construction Department, Govt. of Bihar
 6. The Additional Secretary, Road Construction Department, Govt. of Bihar.
- Respondents

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Advocate and
Mr. Satya Prakash, Advocate
For the State : Mr. S. Shekhar Kr. Prasad, AC to PAAG 2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-07-2018

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

2. The petitioner was awarded punishment under
memo no. 113 dated 9.1.2015, issued under signature of the Joint
Secretary, Rural Works Department, Government of Bihar, Patna,
whereby punishment of demotion from the post of Executive
Engineer to the Assistant Engineer has been awarded to the
petitioner under Rule 14(vii) of the Bihar Government Servant
Classification, Control & Appeal Rules, 2005 (herein after referred
to as the 'the Bihar CCA Rules, 2005').

3. Charge no. 1 and 2 which were communicated to



the petitioner under letter dated 15.7.2009 are in relation to his absence from the office and allege that he had not put his signature on the various documents executed in the course of sale of tender documents etc. Charge no.3 is alleging that there is deficiency in the tender receipt register with respect to the entries made on 10.1.2009. Charge no. 4 alleges that in financial bid of one of the bidders M/s Ghanshyam Lal, some pages were missing and that had specifically been replaced.

4. Charge memo however only indicates two reports submitted under letters dated 24.2.2009 and 17.3.2009 by the Executive engineer, Flying Squad Division No.2., Road Construction Department, Bihar. Said reports are preliminary fact finding reports in relation to the aforesaid allegations. Other than that the charge memo does not disclose any of the documents. No tender receipt register has been produced in the enquiry. Apart from that the report also reveals that other than these two reports, in the preliminary enquiry, nothing has been produced before the Enquiry officer. The evidence which has been considered by the Enquiry officer is recorded in the enquiry report itself.

Relevant paragraph 6 is reproduced herein below:-

“6.साक्ष्य-सभी आरोपों के लिए साक्ष्य के रूप में (1) कार्यपालक अभियंता, उड़नदस्ता प्रमंडल सं० - 2, पथ निर्माण विभाग, बिहार, पटना के पत्रांक- 42 (अनु०) दिनांक 24.02.2009 द्वारा प्राप्त जाँच प्रतिवेदन एवं (2) कार्यपालक अभियंता, उड़नदस्ता प्रमंडल सं० - 2, पथ



निर्माण विभाग, बिहार, पटना के पत्रांक- 80 (अनु0)
दिनांक 17.03.2009 द्वारा प्राप्त पूरक जाँच प्रतिवेदन
उपस्थापित है।”

5. Clearly, tender receipt register or the tender bid submitted by M/s Ghanshyam Lal has also not been placed in the enquiry to establish the charge regarding any deficiency/manipulation or otherwise in the said documents.

6. Said two reports which are preliminary reports pursuant to the facts finding enquiry have been relied upon by the Enquiry officer without examining the author of the said document. Petitioner has not been afforded opportunity to cross examine the author of the report. There appears to be total violation of the procedure prescribed under Rule 17 of the Bihar CCA Rules, 2005.

7. Further, it is evident from paragraph 20 of the enquiry report which takes into consideration the petitioner's absence on 9.1.2009, i.e, the date on which the tender documents were sold and on 10.01.2009 when tender documents were to be received and technical bids were to be opened. Enquiry report also considered the petitioner's absence on 14.2.2009 on which date the financial bids were to be opened. The Enquiry officer has found petitioner's absence and delegation of authority for conducting the said tender related activities of said dates to the Assistant Engineer to constitute a dereliction of duty and giving rise to suspicion against



the petitioner and on that basis held Charge No. 2 proved.

8. The petitioner's counsel has placed on record specific instances in the instant proceedings where the Executive Engineer has delegated the authority to the Assistant Engineer to open the financial bid. Petitioner's stand has been disputed by the respondents by filing reply to supplementary affidavit wherein they have stated that the petitioner was present in the headquarter on that date fixed for opening the financial bid, and since he chose to get the financial bid opened by the Assistant Engineer, the same "...creates suspicion about the role of the petitioner..." . Even in respect of Charge No.4, the enquiry report does not show that there was any material so as to arrive at a conclusion on the petitioner's guilt in respect of Charge Nos. 3 and 4 since the entire proceedings have been conducted under aforesaid manner without reference to any material and without any evidence in support of the charges thereof.

9. Proceedings before the Enquiry officer have been conducted without any evidence to support the charges.

10. Issues were raised by the petitioner before the Disciplinary authority by way of supplementary reply to second show cause on 26.11.2012. Without considering the aforesaid procedural infirmities, the Disciplinary authority has proceeded to



award the punishment impugned in the instant writ petition under order dated 9.1.2015 bearing memo no. 113. The punishment is clearly unsustainable as being contrary to the principle of Natural Justice as well as the procedure prescribed under the Bihar CCA Rules, 2005. The respondent authorities in their decision have violated the provisions contained under Rule 17(14) of the Bihar CCA Rules, 2005 and the Enquiry officer also has not considered the issue as per the procedure prescribed under Rule 18 of the Bihar CCA Rules, 2005 inasmuch as award of punishment is without any evidence on record and also without any reference to the various points raised by the petitioner in his response to the second show cause.

11. For the reasons indicated herein above, the order of punishment dated 9.1.2015 bearing memo no. 113 is quashed. The Disciplinary authority shall take a decision afresh after considering petitioner's response to second show cause. The petitioner would be at liberty to supplement his response with reference to the stand taken by the respondents in course of the instant proceedings regarding suspicion arising out of his absence and delegating the authority to the Assistant Engineer.

12. Let the exercise be completed within a period of eight weeks. In the event the same is filed, the Disciplinary



authority shall consider the same in accordance with law and dispose of the same by a reasoned and speaking order expeditiously and preferably within eight weeks thereafter.

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

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.8.2018
Transmission Date	NA

