

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4303 of 2018

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Rabindra Kumar Singh, S/o Late Sheo Dhari Singh, Assistant Engineer (U/S),
O/o Engineer-in-Chief, Rural Works Department, Patna resident of Village
and Post - Sarsauli, P.S.Jamhor, Distt - Aurangabad (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Works Department,
Government of Bihar, Patna.
2. Sri Gajendra Kumar Mishra, Dy. Secretary, Rural Works Department,
Government of Bihar, Patna.
3. Sri Arun Kumar Mahto, the Chief Engineer-2, Rural Works Department,
Patna-cum-Conducting Officer, presently posted as Superintending Engineer,
Works Circle, Sitamarhi.
4. Sri Kamlesh Singh, ODS, Rural Works Department, Patna, Bihar.
5. Sri Ujjwal Kumar Singh, Assistant Engineer, Quality Control-3-cum-
Presenting Officer, O/o Chief Engineer - 4, Rural Works Department, Patna.
6. Uday Kant Choudhary, Under Secretary, Rural Works Department,
Government of Bihar, Patna, Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur, Advocate
Mr. Hemant Kumar, Advocate
For the Respondent/s : Smt. Archana Meenakshee- G.P.-6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 28-08-2018

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

2. In this case, the petitioner is challenging the



notification dated 07.02.2018, passed by the Under Secretary, Rural Works Department, Government of Bihar, Patna, whereby and whereunder the petitioner has been dismissed from the service under Rule-14(xi) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (for short “the Bihar C.C.A. Rules, 2005).

3. The short facts of this case are that the petitioner was working as Junior Engineer in the Road Construction Department. After promotion, he was discharging the duty of Assistant Engineer in the year 2010. While posted as Assistant Engineer in the District of Rohtas, a trap was conducted, the petitioner was caught red-handed while taking the bribery amount of Rs.15,000/-, that led to institution of criminal case vide Vigilance P.S. Case No.91 of 2014 under Section 7, 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, which is still pending before the Special Judge, Vigilance, Patna. At the same time, a departmental proceeding was initiated by issuance of “*Prapatra-K*” dated 17.07.2015 as provided under Rule-17 of the Bihar C.C.A. Rule, 2005. Altogether 8 charges have been framed against him. One of the charges has been mentioned against the petitioner that he was caught red-handed while taking bribery amount of Rs.15,000/-



and the proposed evidence has been mentioned in the letter of Superintendent of Police, Vigilance vide letter no.2804 dated 25.11.2014, phtocopy of pre-trap memorandum and post trap memorandum and the photocopy of the case diary. Another allegation is connected with regard to demanding bribery for putting his signature on the measurement book and rest of the charges are incidental and connected with the charge no.1.

4. It appears that the petitioner has demanded certain documents vide letter dated 03.08.2015, but has not disclosed the relevancy of the documents. A petition calling for document would only be entertained and to be supplied subject to assigning explanation of relevancy of the document in the departmental proceeding. Finding has been recorded by the Inquiry Officer, accordingly submitted the inquiry report dated 26.09.2016, led to ultimately passing the order of dismissal against the him.

5. Learned counsel for the petitioner raised certain grievances. He submits that the departmental proceeding has not been conducted in accordance with law on the ground that the documents which the petitioner was demanding have not been provided to him, which cause grave prejudice in defending



himself in the inquiry proceeding. He further submits that the filing of the documents will not be sufficient unless the witness has come forward to prove those documents and substantiate the allegation made against him. It has further been submitted by learned counsel for the petitioner that the respondents are required to supply the documents of Station diary showing the movement of the authority for verification of the allegation made against the petitioner, but those documents having been not supplied to the petitioner, inasmuch as, no witness has come forward to prove the allegation made against the petitioner. In nutshell, submission has been made that the inquiry has not been conducted fairly and properly.

6. In support of the submission, learned counsel for the petitioner has placed reliance on the judgment passed in C.W.J.C. No.280 of 2016, which has been affirmed by the Division Bench in L.P.A. No.63 of 2017 and that too has been affirmed by the Hon'ble Supreme Court.

7. Whereas, learned counsel for the State has submitted that while filing the application for supply of the document, the petitioner was required to explain the relevancy of the documents, in absence of showing the relevancy of the documents, the authority is not supposed to supply those



documents. He has further submitted that as the petitioner was arrested in a trap case, itself sufficient for arriving to a conclusion of having committed misconduct in the nature of taking bribery.

8. Having considered the rival contentions of the parties, only those documents can be called by the petitioner which have some connection or relevancy with regard to proving of the charge and the employer is not supposed to supply all documents whatever has been demanded by the employee. As the charge in the present case is related to demand of bribery, he must explain the relevancy of the document in the inquiry, which has not been mentioned in the said letter of demand of the documents. Further, of course, it is the prosecution has to prove the charge, that can be proved by oral and documentary evidence, merely production of the documents cannot be entertained as prove of charge as the status of the F.I.R. is setting the criminal case in motion against the delinquent. Statement made in the F.I.R. will not be treated to be evidence in any sense, unless a person who was a member of the party should come forward and participate in the proceeding and prove the incident which has been alleged against him. Reliance can be placed on the judgment of Hon'ble Supreme Court



rendered in the case of ***Roop Singh Negi vs Punjab National Bank & Ors.*** reported in ***(2009) 2 SCC 570.***

9. As the departmental proceeding is in the nature of *quasi judicial* proceeding, the charges have to be proved by the employer, which has been levelled against the employee by a valid and proper documentary and oral evidence, but this part of the action has not been done by the Department as neither those documents have been proved by bringing the proper witness who could have been put cross-examination by the petitioner, inasmuch as, the incident that took place about the taking of money is also required to be proved by proper evidence by the prosecution, which has also not been done in the present case.

10. In such view of the matter, the notification dated 07.02.2018 (Annexure-1) passed against the petitioner, dismissing him from the service, is hereby set aside. The matter is remanded back to the respondent authorities to conduct the inquiry in accordance with law after giving proper opportunity to the petitioner to defend his case. As this Court has already set aside the order of dismissal, that will not lead to reinstatement of the petitioner in service. It will only be subject to final decision of the competent authority.



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

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	27.09.2018
Transmission Date	N/A.

