

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14001 of 2013

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Kamal Kishore Sharma S/O Sri Jugeshwar Sharma R/O Kusar, P.S. Karapi,
Distt. - Arwal, Presently Superintending Engineer, Public Health Engineering
Deparment, Circle Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Bishwasaraiya Bhawan, Biley Road, Patna.
2. The Secretary, Public Health Engineering Department, Govt. Of Bihar, Bishwasaraiya Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Public Health Engineering Department, Govt. Of Bihar, Bishwasaraiya Bhawan, Bailey Road, Patna.
4. Dy. Secretary, P.H.E.D., Govt. Of Bihar, Bishwasaraiya Bhawan, Bailey Road, Patna.
5. Chief Engineer Urban, P.H.E.D., Govt. Of Bihar, Bishwasaraiya Bhawan, Bailey Road, Patna
6. Additional Commissioner, Departmental Inquiries, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nirbhay Prashant, Advocate
For the Respondent/s : Mr. Mukund Mohan Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-12-2019

Heard learned counsel for the parties.

2. The petitioner, at the relevant point of time, was posted as the Executive Engineer, Public Health Engineering Division, Saharsa. His conduct was found wanting in discipline as well as in sincerity in discharge of his duties to meet the challenges arising out of floods in the Kosi river in the year 2008 in the aftermath of heavy monsoon. Major parts of the Districts of Saharsa, Supaul, Madhepura and Araria were submerged in



deluge. The situation had become alarming. The State Government of Bihar, it is said, was taking serious efforts to ameliorate the sufferings of flood affected people in the areas. It is alleged against the petitioner that when the Secretary of the Department had visited the flood affected areas and had remained there from 03.09.2008 to 04.09.2008, the petitioner had been derelict in his performance in execution of flood relief measures. The Superintending Engineer had also informed the Secretary about the petitioner's lack of interest in the relief work and about his non-participation in daily meetings to monitor the condition in the flood affected areas and the relief work. The petitioner is said to have refused to obey the orders of his superiors too.

3. With the aforesaid allegation, the petitioner was placed under suspension under the orders of the Government of Bihar, issued through a resolution vide Memo No. 611 dated 15.09.2008 of Public Health Engineering Department, Government of Bihar. A Departmental Proceeding was thereafter initiated, with issuance of a charge sheet in Parpatra 'ka', vide a resolution issued on 21.01.2010 (Annexure-3). There were altogether five charges framed against the petitioner which related to his conduct from 03.09.2008 to 06.09.2008. The State Government had decided to adopt the procedure prescribed under



Rule 17 of Bihar Government Service (Classification, Control and Appeal) Rules, 2005, for imposition of major punishment. The Departmental Enquiry Commissioner was appointed as Inquiry Officer whereas Officer was appointed as the Presenting Officer. This is to be noted that the petitioner had submitted his explanation/written statement of defense denying the allegation of misconduct against him. The Inquiry Officer submitted his report on 11.05.2012. The Inquiry Officer in his report recorded his finding that there was no material to suggest that the petitioner was not present in the Headquarters, and though, lack of promptness had been alleged against him, the Department, at no point of time had received any such complaint from the Divisional Commissioner or the District Magistrate. There was no evidence available before the Inquiry Officer to reach a conclusion that the petitioner had failed to carry out any oral order passed by his superiors and, he, accordingly remarked in paragraph-12.8 of his report as follows:-

“इस प्रकार आरोपित पर लगे सभी आरोपों के संबंध में उपलब्ध साक्ष्य से यह स्पष्ट नहीं हो रहा है कि आरोपित का दोष किस हद तक प्रमाणित है।”

4. Further, the Inquiry Officer noted the plea of the petitioner of ignorance of any order of his superiors, which he could have defied and recorded in paragraph-12.9 as under:-



“फिर भी आरोपित श्री शर्मा द्वारा कार्य में अभिरूचि नहीं लेने संबंधी आरोप के समर्थन में ऐसा कोई ठोस साक्ष्य उपलब्ध नहीं रहने के कारण उन्हें अनुशासनहीनता एवं कर्तव्यहीनता के लिए पूर्णतः दोषी माना जाए।”

5. In paragraph-12.10 the Inquiry Officer recorded thus:-

“ऐसी स्थिति में आरोपित श्री शर्मा पर वरीय पदाधिकारी द्वारा दिये गये मौखिक निर्देशों की अवहेलना करने का आरोप एवं आरोपित द्वारा उन मौखिक निर्देशों से अनभिज्ञता व्यक्त करने तथा अन्य कोई ठोस साक्ष्य उपलब्ध नहीं रहने के कारण सारी घटना संदेह के दायरे में आ जाती है।”

6. However, he has taken into account the circumstantial evidence to record his conclusion that the charges appeared to have been partly proved. A copy of the said communication was made available to the petitioner and he was asked to submit his comments on the report of the Inquiry Officer, which he did.

7. Considering the report of the Inquiry Officer and response of the petitioner on the report of the Inquiry Officer, a decision came to be taken by the Government as contained in the resolution issued vide Memo No. 339 dated 27.06.2013 whereby punishment of censure to be entered in his Confidential Report for the year 2008-09 and withholding of one increment without



cumulative effect has been imposed. The said resolution dated 27.06.2013 is under challenge in the present writ application.

8. Mr. Nirbhay Prashant, learned counsel representing the petitioner has argued that it is evident from the report of the Inquiry Officer that there was no evidence at all before him to support the allegation against the petitioner of disobedience of the orders passed by his superiors nor there was any evidence that the petitioner lagged behind in his commitment or sincerity towards discharge of his official duties. He has submitted that the Inquiry Officer has halfheartedly held the charges against the petitioner to have been partly proved though he himself admitted that there was no evidence to substantiate the charge against the petitioner. He has further submitted that the petitioner had filed his detailed representation/explanation commenting upon the report of the Inquiry Officer. The petitioner's representation has however been not considered, while passing the order impugned. He accordingly submits that the impugned order requires interference as the same does not reflect any application of mind on the petitioner's representation filed against the report of the Inquiry Officer.

9. Learned counsel appearing on behalf of the respondents State of Bihar on the other hand, has submitted that



though the charges against the petitioner may not be said to have been proved beyond all reasonable doubts, considering the materials available before the Inquiry Officer, he was right in recording his finding that the charges stood partly proved on the standard of preponderance of probabilities. He has accordingly submitted that the impugned order does not require any interference by this Court.

10. I have carefully gone through the charges framed against the petitioner as well as the report of the Inquiry Officer. It is manifest from the report of the Inquiry Officer that no evidence was adduced in the Departmental Enquiry, in his opinion, to substantiate the charges against the petitioner. The Inquiry Officer, has however, on presumption that the petitioner could have been derelict in discharge of his duties, has recorded his finding that the charges were partly proved. In my opinion, it is difficult to sustain the finding of the Inquiry Officer that the charges against the petitioner could be partly proved though there was no evidence to substantiate the charges, in his own opinion. Further, the petitioner did submit his detailed explanation against the finding of the Inquiry Officer to the effect that the charges were partly proved against him. It is evident from the impugned resolution dated 27.06.2013, however, that there is absolutely no



discussion with reference to the points taken by the petitioner in his explanation against the report of the Inquiry Officer.

11. In any view of the matter, in my opinion, the finding recorded by the Inquiry Officer holding the charges to have been partly proved appears to be vague, based on conjecture and surmises. The finding to the said extent, in my opinion, is perverse. The decision to impose punishment based on such report of the Inquiry Officer cannot be sustained and is, accordingly, set aside.

12. This writ application stands allowed. The consequences shall follow.

13. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

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