

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2274 of 2016

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Lal Mohan Prajapati Son of Sri Sitaram Pandit, resident of Village-
Beldarichak, P.S.- Parsa Bazar, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Road Construction Department, Govt. of Bihar,
Patna.
3. The Deputy Secretary (Vigilance), Road Construction Department, Govt. of
Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Chitranjan Sinha, Sr. Advocate Mr.Prabhu Nath Pathak, Advocate
For the Respondent/s	:	Mr.Deepak Sahay Jamuar, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 11-04-2019

Writ petition has been filed by the petitioner for quashing the notification dated 19.5.2015 issued by the Deputy Secretary (Vigilance), Road Construction department imposing punishment of reduction to the lowest pay scale of the petitioner for a period of three years. Order further directs that increment thereafter shall be allowed on completion of effected punishment. Petitioner has also assailed the order dated 7.9.2015 issued by the Deputy Secretary (Vigilance), Road Construction department rejecting the review filed by the petitioner against the order of punishment dated 19.5.2015.



Learned senior counsel for the petitioner has submitted that inquiry is outcome of a procedure contrary to the principle of natural justice and fairness in action. He submits that procedure adopted by the Enquiry Officer as well as Disciplinary Authority are contrary to the procedure of clauses 17 and 18 of Bihar CCA Rule, 2005.

It is submitted that from the order of punishment dated 19.5.2015, it is apparent that the authorities have placed reliance on report of technical committee to prove the petitioner guilty in the proceeding. The said report is wrongly said to have been communicated to the petitioner along with second show cause notice issued by the disciplinary authority. The second show cause notice, actually does not contain even mention of the report of the technical committee. The second show cause issued to the petitioner dated 8.5.2013 is annexure 21 to the writ petition. Perusal of the same makes it clear that report of technical committee, which was relied on for imposing punishment upon the petitioner, has not been made available to the petitioner. The fact that the report of technical committee has not been made available to the petitioner is fatal to the proceeding.

The substance of the allegation is that petitioner while working as Executive Engineer in the Road Division, Ramnagar at



Bettiah had violated prescribed specification during construction of the road in his division.

The allegation is such that the same can only be verified by the expert whether there is any deviation from the specifications committed by the petitioner or not. Non-supply of the report of technical committee assumes great significance in the background of the charge alleged against the petitioner. Supplementary counter affidavit which has been filed on behalf of the respondents mentions that reliance has been placed on certain report which was submitted by flying squad dated 21.2.2008 and supplementary record sent by the Executive Engineer to the department on 17.3.2008, it also takes into consideration that the material was tested in Testing Report Institute. All these reports had been communicated to the Road Construction department.

From averments made in para 6 of the supplementary counter affidavit, it is apparent that all these communications had been considered by the authorities while subjecting the petitioner to penal consequences. Surprisingly, stand has been taken that no witness was examined in support of charge. The specific stand has been taken by the respondents in the counter affidavit that since there was report of testing institute about quality control of the material, it was not required to be proved by any witness. Such



stand of the respondents in the counter affidavit is highly unsustainable in the eye of law. Having regard to the nature of allegation as well as conclusion of the disciplinary authority that were required to be substantiated at least by examining some witness in support of the various reports including report of the technical evaluation committee. Admitted position is that no witness whatsoever was examined in the enquiry in support of these reports which have been relied upon to punish the petitioner. Non-examination of the witness in support of the said reports has occasioned serious laches in the proceeding. Findings as a result of such proceedings are violative of principles of natural justice and clearly unsustainable.

Procedure adopted by the disciplinary authority is contrary to the mandate of rule 18(3) and (6) of CCA Rule, 2005. Second show cause does not contain any finding of the disciplinary authority. Such findings though tentative are required to be forwarded in the second show cause. Order of punishment had also been issued without recording any finding whatsoever. In fact, in view of the stand taken in the counter affidavit that no witness was produced in support of the various reports which had been made basis for initiation of proceeding, it is clear that



conclusions of the disciplinary authority are not based on no evidence whatsoever.

For the reasons indicated hereinabove, this court quashes the order of punishment dated 19.5.2015 issued by the Deputy Secretary (Vigilance), Road Construction department. Consequently, the order dated 7.9.2015 issued by the Deputy Secretary (Vigilance), Road Construction department rejecting the review filed by the petitioner is also quashed. Matter is remanded to the stage of second show cause. Disciplinary authority would be obliged to issue fresh second show cause observing the mandatory provision under Rule 18(3) of the Bihar CCA Rules, 2005, to the petitioner, and allowing him opportunity to examine report of technical committee and to make his submissions in response thereto.

In view of remand to the stage of second show cause, entitlement of the petitioner shall be subject to final result of the proceeding before disciplinary authority.

Writ petition stands allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.4.2019
Transmission Date	

