

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9581 of 2018

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Shiwnandan Sah, son of late Sitaram Sah, resident of village- Junedi, Post-
Raiteer, Police Station- Silao in the District of Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Building Construction, Government of Bihar, Patna.
2. The Deputy Secretary, Department of Building Construction, Govt. of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Deputy Development Commissioner, Muzaffarpur.
5. The Executive Engineer, Building Construction Department, Muzaffarpur Division, Muzaffarpur.
6. The Sub-Divisional Officer, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Advocate Mr. Shishir Kumar, Advocate Mr. Punit Kumar, Advocate
For the State	:	Mr. Uday Shankar Saran Singh, G.P. 19 Dr. Shobha Coubey, A.C. to G.P. 19.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 24-09-2019

The petitioner was a Gazetted Government servant under the State of Bihar and at the relevant point of time, he was posted as Assistant Engineer, in the divisional office at Muzaffarpur of the department of Building Construction, when a raid was conducted on 11.07.2013 at his residence by the Economic Offences Wing of the State Government leading to registration of Economic Offences Police Station Case No. 28. of 2013. It was alleged against him in the criminal case that he had



acquired property disproportionate to all known sources of his income which was punishable under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988. The petitioner was put under suspension with effect from 11.07.2013, with the issuance of a notification to this effect on 25.07.2013.

2. It transpires that on the basis of a report submitted by the Superintendent of Police, Economic Offence Unit-3, Bihar, Patna, through his letter dated 11.09.2013 addressed to the Principal Secretary, Building Construction Department, a Departmental Proceedings was initiated against the petitioner with the issuance of charge sheet on 22.10.2013. The said letter dated 11.09.2013 has been brought on record by way of Annexure-3 to the writ application. It is evident from Annexure-4, which is the charge sheet of the Departmental Enquiry initiated against the petitioner that the said letter dated 11.09.2013 was the basis for initiation of the Departmental Proceedings. On perusal of letter dated 11.09.2013, it can be easily seen that it did not contain a definite opinion that the petitioner had acquired property disproportionate to his known sources of income. The only opinion which was recorded in the letter dated 11.09.2013 was that the petitioner had failed to declare some of the properties, both, movable and immovable, belonging to him and his wife. It was



alleged against the petitioner in the charge memo that defying the circulars issued by the General Administrative Department of the Government, the petitioner concealed some of the properties held by him and his wife, he failed to declare possession of such property. It was further alleged against him that he did not seek permission of the department to acquire such properties.

3. Before I proceed further, I must take note of an admitted fact, as coming from the bar that the criminal case lodged against the petitioner is still pending, though charge sheet has been submitted.

4. It appears that the petitioner had resisted the decision of the State Government to initiate Departmental Proceedings mainly on the ground that the Departmental Proceedings should not be initiated till conclusion of the criminal case because, if the Departmental Proceedings was allowed to continue the same would prejudice petitioners' defence in the criminal trial. The petitioner's writ application registered as CWJC No. 437 of 2014 was dismissed by this Court by an order dated 10.10.2014. An appeal was preferred under the Letters Patent of this High Court which was also dismissed by a Division Bench of this Court by an order dated 25.10.2016. The petitioner had submitted written statement of his defence denying the allegation in the charge sheet,



taking specific plea, that the property in the name of his wife were acquired by her, through inheritance, she being the sole issue of her parents. The Inquiry Officer submitted his report on 25.10.2016 recording his finding that charges against the petitioner **‘appear to have been *prima facie* proved’**. He further recorded in his concluding paragraph that considering the nature of charges framed against the petitioner, for the purpose of due analysis, it would have been more appropriate to get the matters enquired into by an expert. The report of the Inquiry Officer was supplied to the petitioner and he was asked to make his comments on the said reports. The petitioner submitted his comments on the report of the Inquiry Officer and took specific stand that based on the materials available in the Departmental Enquiry, the charges could not be said to have been proved. Thereafter, the Building Construction Department, Government of Bihar, has come out with the notification issued through Memo No. 3815 dated 18.04.2018 imposing upon the petitioner punishment of dismissal from the service. The said notification dated 18.04.2018 is under challenge in the present writ application.

5. A counter affidavit has been filed on behalf of the State Respondents.



6. In compliance of earlier order of this Court dated 05.09.2019, original records relating to initiation and conclusion of the Departmental Proceedings have been produced by learned G.P. 19.

7. I have heard Mrs. Nivedita Nirwikar, learned counsel appearing on behalf of the petitioner and Mr. Uday Shankar Sharan Singh, learned G.P. 19.

8. Mrs. Nivedita Nirwikar, learned counsel appearing on behalf of the petitioner has made following submissions:

i) The findings of the Inquiry Officer are tentative and cannot be said to be conclusive inasmuch as he has recorded his *prima facie* opinion over the proof of the charge.

ii) No evidence at all was adduced in course of the departmental enquiry on behalf of the department before the Inquiry Officer, and therefore, the findings of the Inquiry Officer is based on no evidence and therefore perverse.

iii) The order of the disciplinary authority imposing punishment of dismissal from service suffers from non-application of mind inasmuch as it does not disclose at all any consideration on the petitioner's response to the report of the Inquiry Officer.



9. She has relied on Supreme Court's decision reported in *(2010) 2 SCC 772 (State of Uttar Pradesh. & Ors. Vrs. Saroj Kumar Sinha)*, *2000 (3) PLJR 10 (Kumar Upendra Singh Parimar v. V.S. Co-Opt. Land Dev. Bank Ltd.)* and *(2009) 2 SCC 570 (Roop Singh Negi Vrs. Punjab National Bank)* in support of her submission that the findings which are based on no evidence are perverse and in such circumstance, this Court is required to interfere exercising power of judicial review under Article 226 of the Constitution of India.

10. Mr. Uday Shankar Sharan Singh, learned G.P. 19, on the other hand, has argued that there has been no violation of principles of natural justice and decision has been taken after complying with the mandatory Provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. He has further submitted that it was obligatory on the part of the petitioner to have disclosed the assets held by his family members which he failed to do. Failure on the part of the petitioner to disclose such facts, amounts to misconduct, as such failure contravenes the requirement under Rule 19 of the Bihar Government Servant Conduct Rules, 1976. He has however, not been able to point out any evidence which was adduced before the Inquiry Officer in support of the charge at the time of enquiry.



11. I have perused the records produced by learned G.P. 19 and I have no hesitation in recording my conclusion that except for the comments of the department on the charges framed against the petitioner, there was no other material available before the Inquiry Officer in support of the charges framed against the petitioner.

12. On close scrutiny of the report of the Inquiry Officer, it can be easily noticed that his finding is based on the facts which were mentioned in the charge sheet, the written statement of defence of the petitioner and opinion of the department submitted before the Inquiry Officer in respect of the charges. The Inquiry Officer has recorded his findings on the basis of analysis of the aforesaid three documents. However, learned counsel for the petitioner is correct in his submission that since the finding of the Inquiry Officer is not definite rather *prima facie*, the said finding cannot be said to be conclusive at the stage of the report of the Inquiry Officer. Further, in his own opinion, an in-depth enquiry by an expert, was more advisable.

13. It is noteworthy that the petitioner was given an opportunity to deal with the report of the Inquiry Officer with the second show cause notice. The petitioner had submitted a detailed reply which has been brought on record by way of an Annexure-



17, dealing with each and every finding of the report of the Inquiry Officer. On perusal of the impugned notification, I find that there is no discussion in the impugned order on the petitioner's reply to the said show cause notice. This is to be kept in mind that issuance of second show cause notice on the point of punishment is no more a mandatory statutory requirement but it is mandatory under the Rules and also in tune with the principle of natural justice that a Government Servant who has been proceeded against, is given an opportunity to deal with and give his comments on the report of the Inquiry Officer, so as to convince the Disciplinary Authority that the findings recorded by the Inquiry officer are incorrect. In such circumstances, it becomes obligatory on the part of the Disciplinary Authority to consider comments of the government servant against the report of the Inquiry Officer. It has been laid down by Supreme Court in case of ***Punjab National Bank and Ors. Vrs. K.K. Verma***, reported in (2010) 13 SCC 494, that even after 42nd Constitutional Amendment, the right of a Government Servant to put-forth his case before the Disciplinary Authority that adverse report of the Inquiry Officer is incorrect, has been protected, though the constitutional requirement of second show cause notice on the point of proposed punishment has been



waived. Paragraph-32 of the decision is relevant and is being reproduced hereinbelow:-

“32. Thus the right to represent against the findings in the enquiry report to prove one’s innocence is distinct from the right to represent against the proposed penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. The right to represent against the findings in the report is not disturbed in any way. In fact, any denial thereof will make the final order vulnerable”.

14. I am further of the view that non-consideration of the petitioner’s comments on the report of the Inquiry Officer by the Disciplinary Authority is, in breach of statutory requirement prescribed under Rule 18 (4) of 2005 Rules. Rule 18 deals with the action to be taken by the Disciplinary Authority on the enquiry report. Sub rule 4 requires that the Disciplinary Authority “shall consider” the representation or submission, if any, submitted by the government servant before proceeding further in the manner specified in Sub Rule 5 and 6. Apparently thus, it is obligatory on the part of the Disciplinary Authority to consider representation or submission of the government servant dealing with the reports of



the Inquiry Officer. No such consideration is reflected from the impugned notification.

15. In view of the above discussions, I am of the considered opinion that the impugned notification dated 18.04.2018 (Annexure-20) needs interference and, is, accordingly, set aside.

16. After having set aside the impugned order, ordinarily, I would have remanded the matter back and directed the Disciplinary Authority to pass an order afresh after considering the petitioner's representation/submission against the findings of the Inquiry Officer. However, as has been noted above, I am of the view that a tentative or *prima facie* view recorded by the Inquiry Officer should not normally be the basis for the Disciplinary Authority to act upon. Rule 18 of the Rules prescribes elaborate procedure for action to be taken by the Disciplinary Authority on receiving the report of the Inquiry Officer. Sub rule (1) of Rule 18 confers upon the Disciplinary Authority, a power to remit the case to the Inquiry Officer for further enquiry and report. I accordingly order that It will be open for the Disciplinary Authority to exercise the said power under sub Rule (1) of Rule 18.

17. Since the impugned decision imposing punishment of dismissal from service is being interfered with by the present



order on the ground of ‘no evidence’ and ‘tentative finding’ of the Inquiry Officer, it is directed that the petitioner shall be reinstated forthwith. Further, since in my view, his removal from service is illegal and invalid, the petitioner shall be entitled to full back wages after his reinstatement, subject to satisfaction of the Disciplinary Authority that he was not gainfully employed/engaged anywhere else. The petitioner will have to make a disclosure to this effect on affidavit before the respondents to claim back wages.

18. The Disciplinary Authority shall be at liberty to pass an order afresh which must be in accordance with Rule 18(1) and 18(4) of the Rules. It will also be open for the Disciplinary Authority to take appropriate disciplinary action against the petitioner depending on the decision of the trial court in the criminal case which is pending against him.

19. This writ application is, accordingly, allowed.

20. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01/10/2019
Transmission Date	N.A.

