

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11478 of 2014

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Sudhir Kumar S/o Shri Lakshmi Narayan Mahto Resident of Village Naya Tola, Sundarpura (Bela), P.O. Lal Bagh, P.S. Lalit Narayan Mithila University, District Darbhanga

... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. The Secretary, Building Construction Department, Bihar, Patna.
3. Engineer-in-Chief, Road Construction Department, Bihar, Patna.

... Respondents

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Appearance :

For the Petitioner : Mr. Abhinav Srivastava, Advocate
For the Respondents : Mr. Standing Counsel

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 11-01-2019

Heard learned counsel for the petitioner as well as learned counsel for the State.

While posted as the Junior Engineer in the Building Sub Division, Madhubani under the Building Construction Department, Bihar, the petitioner was arrested pursuant to a raid in respect of certain allegations in Vigilance Police Station Case No. 42 of 2008 dated 15.7.2008.

Pursuant thereto, a charge memo was communicated to the petitioner under office order dated 9.12.2009 (Annexure 1). Charge memo contained total 12 charges. Charge no. 1 was of alleged fabrication of records and using them as genuine so as to grant undue benefit based on extraneous consideration in the



evaluation of land. Charge no. 2 to 11 are further elaboration of the first charge containing instances of individual case where the monetary assessment of land holdings and the consideration thereon have been erroneously or incorrectly done by the petitioner. Entire exercise of evaluation/assessment of land within 80 to 85 kilometers was being undertaken as the rail over bridge was to be constructed. The petitioner was entrusted the task of evaluation of land for the purpose of acquisition/compensation.

The petitioner has submitted his response before the Enquiry Officer. The point wise response of the petitioner has been considered by the Enquiry Officer in his report which is dated 6.7.2010. It is worthwhile to notice here that the enquiry proceedings were conducted by the Chief Engineer cum Enquiry Officer who was a technical person and having knowledge of the nature of work being discharged by the petitioner and the circumstances under which the same was done.

Before the Enquiry Officer, the petitioner had contended that when he was called upon to undertake the exercise for evaluating the land in the area he was already holding charge of various other works. Still this work had been entrusted to him. Without any resources he had to undertake the evaluation under great pressure of the acquisition authorities as the rail over bridge



was to be constructed expeditiously. It is his submission before the Enquiry Officer that in the circumstances there was insufficient resources and he was to undertake the evaluation by his own means. Accordingly, report which was submitted by him was having some shortcomings. Submissions are that even if there are shortcomings the same are *bona fide* in the circumstances under which the evaluation has been done.

In view of such errors having crept into the evaluation undertaken in the facts and circumstances, various objections were filed. Land Acquisition authorities therefore directed revision of evaluation undertaken by the petitioner. Revision of evaluation was also conducted by the petitioner, but this time with various other guidelines and assistance from the Land acquisition authorities. In the changed circumstances, variation occurred in the evaluation/assessment earlier undertaken by the petitioner with that of the one which has been undertaken by the petitioner with resources made available by the Land acquisition authorities. Accordingly, he has submitted before the Enquiry Officer that variance in the evaluation done in the second phase are *bona fide* and natural consequence based on the different circumstances under which the two evaluations have been done by him.



Explanation regarding difference in the evaluation of individual cases referred to in Charge no.2 to 11 have also accordingly been explained. Enquiry Officer after going through the submission of the petitioner and giving due consideration to the material that had been placed in the enquiry has accepted submission of the petitioner.

It is relevant to take into consideration here the fact that in support of the allegation that the records have been forged and used as genuine to arrive at an inflated evaluation has neither been supported by any evidence or materials before the Enquiry Officer nor there is any findings in respect thereof. In the entire proceedings, the variance simplicitor, without there being any support for allegation of *mala fide* or extraneous consideration, have been made in the Enquiry report as no evidence whatsoever otherwise has been produced in support of mal intention or allegation of corruption.

The authorities being dissatisfied with the outcome of the enquiry proceedings, issued fresh show cause for the same set of charges. In view of the fact that the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules, 2005') does not permit any *de novo* enquiry in respect of the same charge, this Court in the



proceedings arising out of C.W.J.C.No. 3611 of 2012 had set aside the initiation of the *de novo* proceedings relying upon earlier decision of this Court. Order dated 16.3.2012, passed in C.W.J.C.No. 3611 of 2012 is Annexure 6 to the writ petition.

In the said circumstances, the Disciplinary Authority of the petitioner namely the Engineer-in-chief, Road Construction Department, Bihar, Patna issued second show cause notice to the petitioner dated 16.7.2012.

Learned counsel for the petitioner, referring to the second show cause notice, has submitted that the same is in gross violation of the procedure prescribed under Rule 18 of the Bihar CCA Rules, 2005. He submits that the Disciplinary Authority has submitted the second show cause purporting to differ with the findings of the Enquiry Officer. Such difference can only be recorded in accordance with the procedure under Rule 18(2) of the Bihar CCA Rules, 2005. Referring to the said provision, it is pointed out that when the Disciplinary Authority disagrees with the findings of the Enquiry Officer, on any article of charge, it must record its reasons for such disagreement and record its own finding on such charge, only if the evidences on record is sufficient for the purpose.



This Court would reproduce Rule 18(2) of the Bihar CCA Rules, 2005 which deals with the exercise of jurisdiction by the Disciplinary Authority to differ with the findings of the Enquiry Officer. The same is as follows:-

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

Bare perusal of the second show cause notice dated 16.7.2012 goes to show that the same is without assigning any reasons. Learned counsel for the petitioner also submits that the second show cause is communicating findings which are not only baseless but also at variance with the charges which had been communicated to the petitioner earlier under charge memo dated 9.12.2009. It is also submitted that while communicating the findings in purported exercise of Rule 18(2) of the Bihar CCA Rules, 2005, the Disciplinary Authority has not based his findings on any evidence on record.

By making the aforesaid submission, learned counsel for the petitioner has asserted that exercise of power at this stage being contrary to the prescribed provisions under the Bihar CCA



Rules, 2005 and in violation of the principles of Natural Justice, further action arising out therefrom is not in accordance with law and unsustainable. Entire proceedings from the stage of second show cause therefore stands vitiated.

Learned counsel for the State, on the other hand, submits that the stand of the delinquent in the proceedings was found unsatisfactory and as such order of punishment was inflicted upon the petitioner by Annexure 12, i.e., order of punishment dated 18.12.2012 issued by the Engineer-in-chief, Road Construction Department, Bihar, Patna. Further stand of learned counsel for the State is that the authorities have adopted the procedure under the Bihar CCA Rules, 2005 after due consideration of materials and documents available on record the order has been passed. In view of the nature of allegations made against the petitioner, he is not entitled to any leniency in the matter and that this Court should not interfere with the punishment awarded to him which is just and commensurate with the nature of allegations made against the petitioner.

Having considered the rival submissions of the parties, this Court is of the opinion that in view of stand taken note of herein above exercise of jurisdiction by the Disciplinary Authority while issuing second show cause notice dated 16.7.2012 was in



teeth of the provisions contained in Rule 18(2) of the Bihar CCA Rules, 2005. Second show cause notice does not contain any reason in disagreement of the findings communicated therein are without reference to any records/materials/evidence, let alone sufficiency of the same. Order of the Disciplinary Authority dated 18.12.2012 is also without any basis. Neither any evidence nor any material has been taken into consideration or relied upon by the Disciplinary Authority while awarding punishment to the petitioner. In fact weakness of the defence has been made the basis of order of punishment issued against the petitioner. In this connection, this Court would refer to the decision of the Hon'ble Apex Court in case of **A Savariar Vs. Secretary, Tamil Nadu Public Service Commission & anr**, reported in **2013 AIR SCW 1358**. Relevant part of the same is being reproduced herein below:-

“17. The learned Single Judge and the Division Bench of the High Court failed to notice the aforesaid fatal flaw in the orders passed by the Controller of Examinations and the Chairman and decided the matter by assuming that even though the Commission had not adduced any tangible evidence to prove the charges against the appellant, the same stood proved because of the weakness of his defence.

18. In Delhi Cloth and General Mills Company v. Ludh Budh Singh (1972) 1 SCC 595: (AIR 1972 SC 1031), this Court held that it is the primary duty of the person making the allegations to establish the same by producing evidence and not for the



delinquent to produce negative evidence to prove his innocence.”

It is a trite law that weakness of evidence cannot be made basis of issuing punishment order. It is for the department to bring home the charges in accordance with the procedure prescribed for conduct of such departmental proceedings and on basis of some evidence or material in the course of enquiry. Order of the Disciplinary Authority is in gross violation of the said procedure prescribed under the Bihar CCA Rules, 2005.

At both stages, while exercising jurisdiction under Rule 18(2) of the Bihar CCA Rules, 2005 as also at the time of issuing order of punishment dated 18.12.2012, the Disciplinary Authority has issued orders without recording any reasons in support of the same and without referring to any material/evidence in support of the conclusion. The entire proceeding therefore stands vitiated. Second show cause dated 16.7.2012 as also order of punishment dated 18.12.2012 are quashed. Order passed on the petitioner's review dated 6.5.2013 which merely reiterates and reaffirms the conclusion arising out of such illegal procedure, also fails. Order dated 6.5.2013 passed in the review is also quashed.

In view of conclusions arrived at in the instant proceedings, petitioner would be entitled to consequential benefits.



This order shall however shall not preclude the respondent authorities from proceeding against the petitioner from the stage of second show cause in accordance with law.

Writ petition is allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2019
Transmission Date	NA

