

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11703 of 2012

=====

Ashish Kumar Sinha, son of late Chakradhar Mandal, resident of Village-
Rampur, P.S. & Post-Jamalpur, District- Munger.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department,
Government of Bihar, Vishvesharaia Bhawan, Baily Road, Patna.
2. The Deputy Secretary (Vigilance), Road Construction Department,
Government of Bihar, Vishvesharaia Bhawan, Baily Road, Patna.
3. The Additional Secretary, Road Construction Department, Government of
Bihar, Vishvesharaia Bhawan, Baily Road, Patna.
4. The Secretary, Rural Development Department, Government of Bihar,
Patna.
5. The Chief Engineer, South Bihar, Road Construction Department,
Government of Bihar, Vishvesharaia Bhawan, Baily Road, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Avanish Kumar Singh, Advocate
For the Respondent/s	:	Mr. H.S. Roy, A.C. to Advocate General

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 01-02-2019

The petitioner is allowed to make necessary
amendment in the prayer portion of the writ petition.

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

3. In this case, the petitioner is challenging the inquiry
report dated 28.07.2008 (part of Annexure-6), whereby and



whereunder the Inquiry Officer has found the charges proved against the petitioner. In a consequence, vide Notification no.10910 (S) dated 26.07.2010 (Annexure-8), the Additional Secretary, Government of Bihar, inflicted the punishment upon the petitioner of dismissal from service. Whereupon, the petitioner filed a Review-cum-Revision petition, which has also been rejected vide order dated 27.06.2011 (Annexure-9).

4. In the present case, allegation has been made against the petitioner that he along with others have acted fraudulently in allowing the contractor to construct “B” grade road, thereby misappropriated the fund of the State Government.

5. The short facts of this case are that while the petitioner was posted as Assistant Engineer in the National Rural Employment Programme, Lakhisarai, he along with Vinay Kumar Nag, Assistant Engineer, Kedar Prasad Suman, Junior Engineer and others were made accused in Vigilance Case No.89 of 2006 and Special Case No.30 of 2006 for offence punishable under Sections 409, 420, 465, 467, 468, 471, 477(A), 379 and 120B of the Indian Penal Code and Section 13(2) read with Sections 13(1) (D) of the Prevention of Corruption Act, 1988. A written complaint was received from one Ashutosh, Member of Jila Parishad, Lakhisarai to the Deputy



Superintendent of Police, Vigilance Department, Bhagalpur, who conducted the investigation and submitted the report dated 29.11.2006 to the Superintendent of Police, Vigilance Department. Whereupon, a Vigilance case has been instituted vide Vigilance Case No.89 of 2006 and Special Case No.30 of 2006. In the complaint petition, the member of Jila Parishad made allegation of misappropriation of Government fund under Food for Work scheme for the year 2005-06 in Piri Bazar, Suryagarha Block, District- Lakhisarai. The allegation has been made therein are as follows:-

“(1) For construction of the connecting Road from Bhagalpur Mushari to Lariya Korasai, out of the estimated cost of Rs.20,97,600/- an amount of Rs. 11,07,500/- had been spent. As per the estimation, Metal had to be brought from Shekhpura but metal used was stolen from the nearby Abhaypur hills. No earth work was done; muster roll contained forged thumb impressions. Despite the majority of the population being scheduled tribe, none from them was provided work and local bad elements had been given work by the junior engineer.

(II) For the construction for the connecting Road from Variyapur (Garib Yadav's house) to Variyapur Sautari Tola, out of the estimated cost of Rs. 20,51,200/- an amount of Rs. 12,33,500/- had been cleared. The project had been completed. The



connecting road was not constructed from the house of Garib Yadav. Metal used was stolen from the nearby Abhaypur hills. No road roller was used, muster roll contained forged thumb impression, etc.”

6. The Executing Agent of the work was one Kedar Prasad Suman, Junior Engineer. As per the charge, the petitioner and others have connived in misappropriation of Government fund in a systematic manner. The petitioner was put behind the bar, but later on, he was released, subsequently the Government has decided to initiate a departmental proceeding and vide Notification No.13746 dated 29.11.2007 (Annexure-3) decision to initiate departmental proceeding was communicated to the petitioner. Shri Chandra Dev Ram, Chief Engineer, was appointed as Inquiry Officer and Sri Narayan Jha, was appointed as Presenting Officer. The Inquiry Officer has directed even the Vigilance Department to produce necessary evidence so that truth can be elicited. The charges which has been alleged against the petitioner are as follows:-

“(I) Under Scheme No. 04/2005-06 of Work for Food Scheme, for the construction of the connecting Road from Bhagalpur Mushari to Lariya Korasi, Rs. 20,97,600/- had been sanctioned as the estimated amount with the provision of earth work till the height of 3 ft, with metal grade I upto 4 inch and metal grade II upto 3 inch with morum 23%, the size



of Metal Grade I fixed between 90 MM and 63 MM and Metal Grade II from 65 MM to 45 MM, but the Enquiry committee of the Vigilance Bureau found from the spot enquiry as also from the records, that no earth work had been done and yet the Junior Engineer, Kedar Prasad, manipulated the measurement book by showing fake vouchers relating to the carriage of earth/cutting, rolling and compaction, which was examined by the petitioner after which the amount was paid. The petitioner had thus assisted the Junior Engineer Kedar Prasad in receiving the payment of Rs. 3,81,370/- without there being any earth work done. The petitioner was therefore charged of being jointly responsible for the misappropriation of Rs. 3,81,370/- of the government money.

(II) Under Scheme No. 13/2005-06, for the year 2005-06, the construction of the connecting Road from Variyapur (Garib Yadav's house) to Variyapur Sautari Tola, was given administrative sanction at an estimated cost of Rs. 20,51,200/- with the provision of earth work till the height of 2 ft, with metal grade I upto 4 inch and metal grade II upto 3 inch. The Enquiry committee of the Vigilance Bureau found out that the connecting Road was not constructed from the house of Garib Yadav but at a distance of 300 ft. Further, earth work was done only upto the height of 1 ft, the size of the stone metal was bigger than the sanctioned size whereas the cutting was not done with the stone machine. No Morum work could be



found out whereas the measurement book showed carriage of earth/cutting, rolling and compaction along with the carriage of metal Grade I & II from Sheikhpura as also Morum work and its carriage from Sheikhpura. The entries in the measurement book had been examined by the petitioner after which the amount had been disbursed. The petitioner actively assisted the Junior Engineer Kedar Prasad in getting the release of Rs. 9,59,572/- without there being any work done. The petitioner was therefore charged of being jointly responsible for the misappropriation of the government fund of Rs. 9,56,572/-."

7. As per the petitioner, he demanded necessary documents for filing explanation so that he can take a proper defence in the inquiry proceeding, but the same were not supplied to him, ultimately, he filed a written statement and denied the allegation. In the written statement, it has further been stated that no hearing was taken place, but he was asked to put his signature on attendance register, no witness was examined nor cross examination of the witnesses was taken place, no document was produced by the respondent-State, but the materials were available to the Inquiry Officer was the charge-sheet, explanation and the comment of the Presenting Officer, except that, the prosecution has not brought any



material to substantiate the charges, which have been leveled against the petitioner. The inquiry report itself indicates, which is apparently clear from paragraph nos.5.1.3 and 5.2.3 that the Presenting Officer has failed to produce any material evidence substantiating the allegation made against the petitioner, but in an utter surprise, the Inquiry Officer submitted the report, recording that the allegation has been made against the petitioner have been found proved. The Inquiry report was served upon the petitioner and the Disciplinary Authority vide order dated 26.07.2010 refused to accept the defence taken by him and dismissed the petitioner from the service. The petitioner filed Revision petition unsuccessfully.

8. Learned counsel for the petitioner submits that the procedure for departmental inquiry, which has been followed in the present case, is not compatible with the provisions of Rule-17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, as in the present case, except the explanation submitted by the petitioner and the comment filed by the prosecution, there is no evidence at all of any manner, which substantiate the allegation made against the petitioner. It has further been submitted that in the departmental inquiry, the Inquiry Officer has to maintain neutrality, he cannot lean toward



either in favour of the prosecution or in favour of the defence and he has to arrive to a finding on the basis of materials collected and produced before the Inquiry officer. It is not the duty of the Inquiry officer that if the evidence are not available, he will go and collect the evidence and give a finding against the delinquent Government employee. The inquiry report itself reflects that the Inquiry Officer himself has recorded that the prosecution failed to produce any material showing the propensity of committing misconduct by the petitioner, in fact the Presenting Officer has done nothing, save and except the filing of comment, but when such nature of charge has been levelled against the petitioner with regard to misappropriation of Government fund, in such circumstance, it cannot be taken lightly, but required to be proved the charges by producing the substantial material either oral or documentary showing the guilt of the petitioner.

9. This principle has been enunciated in the case of *State of U.P. & Ors. vs Saroj Kumar Sinha* reported in *2010(2) SCC 772* and *Roop Singh Negi vs. Punjab National Bank & Ors.*, reported in *2009 (2) SCC 570*. In both the cases, the manner and method for holding departmental proceeding has been narrated elaborately. However, in the present case, no such



documentary evidence or oral evidence have been produced to substantiate the allegation made against the petitioner and in an *ipsi dixit* manner the Inquiry Officer has recorded the finding against the petitioner, whereas the Inquiry Officer was required to confine his inquiry on the basis of the materials brought by the prosecution and he cannot go on collecting evidence or arrive to a finding of proving of guilt without any material.

10. In such view of the matter, this Court is of the view that the Inquiry has not been done in a proper manner and the inquiry report itself is completely defective as the Inquiry Officer has arrived to the finding of guilt without any material evidence, but based on surmises and conjectures, hence, the inquiry report is also suffers from defective, for the reasons mentioned hereinabove.

11. In such view of the matter, the inquiry report dated 28.07.2008, the order of punishment dated 26.07.2010 (Annexure-8) and the order of Revisional Authority dated 27.06.2011 (Annexure-9) are quashed. The matter is remanded back to the competent authority for fresh inquiry. Since, the allegation are very serious in nature, this Court directs the respondents to complete the entire process of inquiry within a period of six months from the date of receipt/production of a



copy of this order.

12. Accordingly, this writ petition is allowed to the
above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	19.02.2019
Transmission Date	

