

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8711 of 2017

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Braj Bhushan Sharma, son of Late Ram Govind Sharma resident of near Jail Road, Shahpur, Govind Complex, P.S. Shahpur, District Gorakhpur Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer in Chief Madhya cum the Disciplinary Authority, Water Resources Department, Government
4. The Officer on Special Duty, Water Resources Department, Government of Bihar, Patna.
5. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer, Water Resources Department, Balmiki Nagar, District - West Champaran, Bihar.
7. The Executive Engineer, Main Western Canal Division, Balmiki Nagar, District West Champaran, Bihar.
8. Sri Ram Pukar Ranjan son of Late Laxmi Baitha at present posted as Engineer in Chief, Water Resources Department, Government of Bihar, Patna, resident of Mohalla 4B, Khushi Villa, P.S. Budha Colony, District Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan
For the Respondent/s : Mr. Harish Kr.-GP8

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 14-05-2019

1. Heard the learned counsel for the parties.

2. The petitioner, who at the relevant time was

posted as Junior Engineer in the Main Western Canal Division,

Balmiki Nagar in Water Resources Department has been



dismissed from service by order dated 13.04.2017 contained in Notification No. 544 issued under the signature of Joint Secretary, Water Resources Department, which order of punishment is based upon the enquiry report as communicated vide Letter No. 2405 dated 09.11.2016 issued under the signature of Deputy Secretary to the Government, Water Resources Department, Government of Bihar, Patna on the instructions of the Principal Secretary of the Department.

3. Apart from the petitioner, another person viz. Dinesh Kumar Chaudhary was also subjected to the same departmental proceeding who was served with a penalty of reversion from the post of Chief Engineer to Superintending Engineer. A Bench of this Court in case of *Dinesh Kumar Chaudhary vs. State of Bihar and Ors.* (C.W.J.C. No. 16258 of 2017) by order dated 04.12.2018 found that the decision of the disciplinary authority could be faulted on the sole ground of the enquiry officer not being produced for him to be cross-examined. Relying upon *Roop Singh Vs. Punjab National Bank & Ors.*, reported in (2009) 2 SCC 570, the Bench held that the enquiry proceedings and the report cannot stand the scrutiny



of fairness as the order of punishment in that case and similarly in the present case, is based upon the report of the enquiry officer and the concerned employee was not given an opportunity to cross-examine him.

4. Under the aforesaid circumstances, in the aforesaid case viz. *Dinesh Kumar Chaudhary vs. State of Bihar and Ors. (C.W.J.C. No. 16258 of 2017)* the enquiry report as well as the order of punishment were set aside and the matter was remanded to the enquiry officer to conduct a de novo enquiry as per the law which was explained in the order.

5. The case of the petitioner, though the nature of punishment given to him is harsher than the employee whose case has been referred to above, is identical and similar. The same enquiry officer who reported against the petitioner and which report was the basis of the disciplinary authority passing an order of punishment of dismissal was not produced for him to be cross-examined by the petitioner.

6. For the aforesaid reasons, the enquiry report as communicated vide Letter No. 2405 dated 09.11.2016 and the



order of dismissal from service vide Notification No. 544 dated 13.04.2017 are set aside.

7. The case is remitted to the enquiry officer for holding a fresh enquiry, providing an opportunity to the petitioner to question/cross-examine the maker of the enquiry report, if so advised, and then submit a report accordingly.

8. Since it would be a *de novo* enquiry, it would be open to the petitioner to raise other points also which shall be considered in correct perspective

9. Needless to state that since the order of dismissal has been set aside, necessary consequential order shall also be passed in the meanwhile, as has been passed with respect to other employee who also was subjected to the punishment.

10. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	15.05.2019
Transmission Date	

