

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19952 of 2012

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Raj Kumar Jaiswal Son Of Late Chhedi Jaiswal Resident Of Village -
Khanpur, P.O. - Lakshmipur Via Mathurapur, P.S. - Pirpanti, District -
Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resource Department, Govt. Of Bihar, Patna
3. The Chief Engineer, Water Resource Department, Aurangabad
4. The Superintendent Engineer, North Koyal Canal Division, Aamas, Camp-Sherghati, Gaya
5. The Executive Engineer, North Koyal Canal Division, Camp-Sherghati, Gaya
6. The Assistant Engineer Mechanical, North Koyal Canal Division, Aamas, Camp-Sherghati, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gaurav Govind, Adv.
For the Respondent/s : Mr.Rakesh Narayan Singh, AC to AAG5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 25-02-2019

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order of dismissal passed by the Chief Engineer, Water Resources Department contained in Letter No. 2820 dated 22.08.2007 recording that the explanation submitted by the petitioner was not found satisfactory as he remained absent for five years unauthorizedly. The appeal filed by the petitioner has also been rejected vide order contained in Memo No. 1539 dated 23.12.2011.

The petitioner was discharging the duty as Work-charge Employee, was working as a Survey Khalasi. It has been found that the petitioner remained absent from 23.5.2001 till the date of



issuance of the charge-sheet. From the records, it appears that on account of being remained unauthorized absent and the matter was referred to the Superintending Engineer for holding an enquiry and submit a report. On that basis, the Superintending Engineer conducted enquiry, submitted report which led to initiation of charge-sheet vide Memo No. 1617 dated 14.5.2007 attaching the copy of the charge-sheet. In the charge-sheet, it has been mentioned that the petitioner remained absent unauthorizedly from 23.5.2001 till the date of issuance of the charge-sheet. The Executive Engineer issued notice for reporting, even then, he remained absent. On receipt of the charge-sheet, the petitioner filed his explanation and submitted that the allegation made against the petitioner of being absent is completely incorrect as he was discharging the duty at the place of posting. The enquiry was conducted, ultimately the enquiry report was submitted which he has replied in the show-cause and, ultimately, the petitioner was dismissed from service including the appeal filed by him has been rejected.

Learned counsel for the petitioner has raised a point that during period, he has been shown to be absent is belied from the letter of Executive Engineer itself dated 19.3.2004 which mentions that the petitioner was discharging the duty from 23.5.2001 till



date and, for payment of salary, the matter remained pending before the Chief Engineer. It has further been said that the Executive Engineer prepared the bill of Rs. 6,90,000/- against the work discharged by the petitioner for the period from May, 1998 to March, 2007 and submitted that the aforesaid two documents are sufficient to reflect that the allegation of being remained absent unauthorizedly from 23.5.2001 is completely without any basis and actuated by malafide of some higher authority and further said that the enquiry proceeding was initiated on account of the report submitted by the Superintending Engineer. The enquiry report is the basis for initiation of departmental proceeding but, the same was not supplied to the petitioner and, in absence of supply of the documents, it vitiates the entire proceeding.

Learned counsel for the State submits that the letter dated 19.3.2004 (Annexure-4) reflects the petitioner to be working from 23.5.2001 is a tampered document as the letter itself indicates two handwritings have been used in the preparation of that letter and further submitted that the due to sheer mistake by the earlier Executive Engineer, the bill of Rs. 6,90,000/- has been shown to have been paid for the period May, 1998 to 2007 but, he has not denied the fact that the enquiry report of the Superintending Engineer, which is the foundational fact for initiation of



departmental proceeding, was not supplied to him though the same has been attached with the counter affidavit.

Having considered the rival contentions of the parties, this Court is of the view that taking a support from the counter affidavit is one thing and supply of document with the charge-sheet is another thing. Attachment of enquiry report with the counter affidavit will not remove the defect of the proceeding which itself goes to the root of the matter. Had the report been not considered for initiation of departmental proceeding, and it was not used in the departmental proceeding, the matter could have been otherwise but, when the report itself is the basis then it was incumbent upon the respondents to supply the same when the enquiry proceeding is a serious business. It has to be done after following the proper procedure and, the document itself shows that the petitioner has remained working during the period, has been shown to be absent become subject matter of proceeding but, a plea has been taken by the State of tampering of the record. All such records should have been come before the Enquiry Officer to examine the correctness of the stand of the petitioner vis-a-vis the correctness of the respondent State with regard to being absent during the period 23.5.2001 – 2007. This Court is of the view that as there is fragrant violation of the natural justice as also failure to



supply the enquiry report which is the basis for proceeding vitiates the entire proceeding but, now, there is no need to supply the copy of the enquiry report as the same is the part of the counter affidavit.

Accordingly, the order of termination dated 22.8.2007 (Annexure-16) and the order dated 16.12.2011 (Annexure-18) are quashed. The matter is remanded with a direction to the respondents to conduct a fresh enquiry bringing on record the letter dated 29.3.2004 which has allegedly been shown to have been tampered will be examined by the Enquiry Officer and it has also to be found out as to whether the then Superintending Engineer has collected the amount of Rs. 6,90,000/- showing the petitioner was working for the period May, 2001 to 2007 and if it has been collected, about the status of payment to the petitioner of the aforesaid amount is to be verified.

At the same time, it is expected that the Disciplinary Authority and the Appellate Authority will take into consideration all the facts and will pass a speaking order in accordance with law.

The entire proceeding must be concluded within a period of six months from the date of receipt/production of a copy of this order.



This Court is not giving any opinion on the merit of the case.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2019
Transmission Date	

