

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13537 of 2017

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Bikrama Singh, son of Late Subedar Singh, resident of Village- Puraini,
Police Station- Kudra, District- Kaimur (Bhabua).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner-cum-Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Additional Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer, Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Prasad Yadav, Advocate
For the Respondent/s : Mr. Harish Kr.-GP-8

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 08-07-2019

The petitioner has challenged the order dated 11.11.2013 issued under the signature of the Special Secretary, Government of Bihar, dismissing the petitioner from service as also the order dated 12.01.2016 contained in Memo No. 77 issued under the signature of Additional Secretary, Government of Bihar whereby the review preferred by the petitioner against



the order of punishment of dismissal has been rejected and the order of punishment has been upheld. An additional prayer of the petitioner is that after setting aside of the aforesaid two orders, a direction be issued to pay to the petitioner, the salary from the date of his dismissal i.e. from 01.04.2002 till the date of the retirement.

2. A departmental proceeding was initiated against the petitioner for his alleged misconduct during the period 1988-90 when he was posted as Assistant Engineer in Son Canal Modernization Division, Sasaram Camp, Dehri. The charge-sheet was issued against him on 10.11.1998 which was based on the allegations levelled in the F.I.R bearing name and number Dehri P.S. Case No. 302 of 1995 dated 11.08.1995 with the allegation that the petitioner, in conspiracy with a private contractor, had cleared for payment, a forged and fabricated bill of the amount of Rs. 4,98,000/- without the work having been completed. Thus, the



charge against the petitioner is of having unauthorizedly cleared a bill of Rs. 4,98,000/- of the contractor without the completion of work which is a grave misconduct.

3. In the enquiry, the conducting officer submitted his report dated 10.03.2000, holding the petitioner guilty of charges. After the second show cause notice was issued to him, final order of punishment dated 27.03.2002 was passed, dismissing the petitioner from service and holding that nothing beyond the subsistence allowance would be payable to him for the period of suspension.

4. A Bench of this Court vide order dated 26.02.2009 passed in C.W.J.C. No. 10362 of 2002 found that the conducting officer had held the petitioner guilty of charge only on the ground that he had failed to file his written statement of defence and there was no consideration of the materials available on record before him. It was also found that the disciplinary authority had towed the line of thinking of the conducting officer



and has put his approval on such report. It was brought to the notice of the learned Single Judge that in an arbitration proceeding, the aforesaid bill of the contractor which is alleged to have been cleared unauthorizedly by the petitioner was found genuine and that the contractor was required to be paid. Such award of the arbitrator was finally affirmed in Miscellaneous Appeal No. 174 of 2001.

5. Taking these aspects into account and specially holding that the Inquiry Officer was under an obligation to return a "finding of guilt" and not a "suggestion of guilt", the High Court set aside the order of punishment.

6. The State of Bihar preferred an appeal against the aforesaid order vide LPA No. 755 of 2009.

7. It would also be relevant to state that during the pendency of the writ petition preferred by the petitioner, the petitioner was allocated the State of Jharkhand after the bifurcation of the State of Bihar.



The State of Jharkhand also challenged the order of the learned Single Judge, setting aside the punishment order of the petitioner vide LPA No. 652 of 2010.

8. Thus, both the appeals were heard together and disposed of by a common order dated 14.08.2012.

9. It has also been brought to the notice of this Court that during the pendency of the aforesaid appeals, a prayer was made on behalf of the State of Bihar to stay the order of the learned Single Judge passed in C.W.J.C. No. 10363 of 2002, which was rejected. Thereafter, the matter was taken to the Supreme Court. The High Court was requested to hear the LPAs and dispose them of at an early date.

10. The two appeals were disposed of with an order directing for the remittance of the case to the stage of enquiry before the conducting officer. It was further directed that all the necessary requirements of making the petitioner available of the documents which he demanded and recording of the evidence, if so



advised and found necessary by the authorities, to be complied with and conclude the proceedings in accordance with law.

11. It appears from the orders impugned and from the records of the case that as directed by the Division Bench of this Court, necessary documents were made available to the petitioner and an Inquiry Officer was appointed.

12. The Inquiry Officer submitted his report on 14.12.2012, exonerating the petitioner of the charges levelled against him. The report of the Inquiry Officer dated 14.12.2012 was analyzed by the Government and several points of difference were recorded.

13. A second show cause notice, indicating the points of difference with the Inquiry report of the conducting officer, was given to the petitioner which was replied by him.

14. The note of difference indicated that pages 15-17 of the measurement book No. 163 disclosed 'nil



endorsement' about which there were other confirmatory evidences.

15. The other ground of difference with the report was that payment with respect to work could only be given if the earlier 'nil endorsement' was set aside after obtaining necessary approval from the competent authority, which was not done in the present case and payment was made.

16. Lastly, it was held that pages 15-17 of measurement book No. 163 was torn off and changed which was noticed by the office of the Executive Engineer and a noting was made in the measurement book that in the past, 'nil work' was shown in the aforesaid two pages.

17. The explanation offered by the petitioner that the pages of the measurement book from 16-100 was empty and that bill was made against actual work carried out by the contractor and the concerned pages were torn by an official in the Executive Engineer's



Office was not found to be borne by records and misleading.

18. The Disciplinary Authority, on analyzing the note of difference and the explanation offered by the petitioner found the charges against the petitioner to be proved and recorded the finding of guilt with the imposition of punishment of dismissal from service. The aforesaid order of dismissal had a prior sanction of Bihar Public Service Commission and the Cabinet. The aforesaid order was passed on 11.11.2013.

19. The revisional order dated 12.01.2016 reflects that all the grounds urged by the petitioner were taken into account and the objection to the order of punishment was without any substance.

20. Thus, the revision also was dismissed by the aforesaid order.

21. After perusal of the orders impugned in the petition and going through the records of the case, I am of the view that all the procedural formalities were



complied with and there is nothing to suggest any unfair treatment to the petitioner. The earlier order of dismissal was not sustained because of the serious fallacy in the Inquiry Report. Before the new conducting officer, the matter was thrashed out afresh with fair opportunity to the petitioner to defend his case. A clear finding was recorded and the point of difference with the Inquiry Report which exonerated the petitioner was properly communicated to the petitioner for him to respond. The explanation of the petitioner has also been taken into account before arriving at a conclusion.

22. The arbitration award, entitling the contractor to the payment of the aforesaid bill which is said to have been unauthorizedly and illegally cleared by the petitioner and its further affirmation with the dismissal of miscellaneous appeal, does not come in the way of the departmental proceeding ending against the petitioner. The evidence in a departmental proceeding is to be assessed on the principle of preponderance of



evidence which is very different from the exacting standards in a civil proceeding before the arbitrator.

23. It is by now well settled that a departmental proceeding is a *quasi judicial* function which is governed by its own rules and procedures. The result of a criminal case or a civil proceeding may not have any direct impact on the conclusion arrived in a departmental proceeding.

24. There is another aspect to the matter.

25. This Court sitting in the writ jurisdiction does not act as an appellate authority over the judgment of the Disciplinary Authority and the Revisional Authority. Interference with the decision of the departmental authorities is no doubt permissible but only when it is found that the proceedings have been conducted in violation of principles of natural justice or statutory regulations prescribing the mode of such inquiry or if the decision is vitiated by extraneous consideration which is not reconable to evidence or merits of the case



and if the conclusion of the authority on face of it is arbitrary and unreasonable.

26. In ***State of Andhra Pradesh versus S. Shree Rama Rao AIR 1963 SC 1723***, the Supreme Court has held that the High Court is not constituted in a proceeding under *Article 226* of the Constitution as a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned with testing whether the enquiry has been held in accordance with the rules and procedures and the delinquent officer has been offered reasonable opportunity.

27. The aforesaid view was reiterated in several later pronouncements (refer to ***B.C. Chaturvedi versus Union of India 1995 (6) SCC 749***). The legal position about the acceptance/non-acceptance of the Inquiry Report of the Conducting/Inquiry Officer has been succinctly stated by the Supreme Court in ***A.N. D'Silva versus Union of India AIR 1962 SC 1130***



that neither findings of the Inquiry Officer nor his recommendations are binding on the punishing authority.

28. A Constitution Bench of the Supreme Court in ***Union of India versus H.C. Goel AIR 1964 SC 364*** has affirmed the aforesaid position and has conclusively held that the employer/government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in such report.

29. Thus, I find that there has not been any violation of the principles of natural justice and the proceedings have been held in conformity with the statutory requirements prescribing the mode of the inquiry.

30. The decisions of the Disciplinary Authority as well as the Revisional Authority do not appear to be vitiated by any extraneous consideration and both the orders rest on evidence on record.

31. There is no reason to interfere with the



aforesaid orders.

32. For the reasons stated above, the petition
has no merits and the same is dismissed.

33. No order as to costs.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	09/05/2019
Uploading Date	08/07/2019

