

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19322 of 2018

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Birendra Kumar Sinha son of Late Sridhar Narayan, Resident of Flat No. 208,
Vrindavan Garden Apartment, Ramnagari More, Ashiyana Road, Patna-
800025. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. Additional Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Joint Secretary (Abhiyantran), Water Resources Department, Government of Bihar, Patna.
6. The Deputy Secretary (Management), Water Resources Department, Government of Bihar, Patna.
7. The Engineer in Chief (North), Water Resources Department, Government of Bihar, Patna.
8. The Chief Engineer, Planning and Monitoring, Water Resources Department, Government of Bihar, Patna
9. The Chief Engineer, Water Resources Department, Valmikinagar, Western Champaran.
10. The Principal Secretary, Vigilance Department, Government of Bihar.
11. The Engineer-in- Chief, Technical Examination Cell, Vigilance Department Cell, Bairak No.3, Main Secretariat, Patna
12. The Superintending Engineer, Vigilance Department, Technical Examination Cell, Bairak No. 3, Main Secretariat, Patna
13. The Bihar Public Service Commission through its Secretary.
14. The Accountant General, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brajesh Kumar, Adv.
For the State	:	Mr.Harish Kumar- GP 8
		Mr. Sudhir Kuamr Upadhyay, AC to GP 8
For the Accountant General	:	Mr. Shiv Kumar
For the BPSC	:	Mr. Sanjay Pandey.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 08-08-2019

In this case, the petitioner is challenging the
Notification no. 44 dated 05.01.2018 by which the Joint Secretary,



Water Resources Department, Government of Bihar inflicted the punishment of reduction of 20% pension for five years.

2. The petitioner was posted as Superintending Engineer, Planning and Monitoring Circle No. 2 during the period 2010-2012. During the said period, restoration work of the main western canal Balmikinagar Nepal portion was in execution under the Nepal Hitkari Yojna, 2009. The work of restoration was started on the basis of allocation of fund by the World Bank. The people of locality made a complaint to the Ministry of Water Resources Department, Government of India, alleging therein that instead of using the stone and sand from respective places as per the contract, such as, stone chips from Sheikhpura, Pakur and sand from Sone river, local sub-standard materials have been used for the said work under the conspiracy of the contractor with the concerned Engineer, accordingly the payment has been made to the contractor, thereby huge public money has been embezzled by the contractor as well as associated Engineers. The Ministry of Water Resources Department, Govt. of India requested the Principal Secretary, Water Resources Department, Government of Bihar to make enquiry into the matter and in pursuance thereof, a vigilance team was constituted by the Vigilance Department, Technical Examination Cell to verify the allegation made by the local people.



3. The Chief Engineer, Water Resources Department, Balmikinagar submitted report about the use of local material against to the terms of contract thereby Rs.24.65 crore of money siphoned. Allegation has been made against this petitioner that he was asked to make a site inspection of the project and submit the report. In pursuance thereof, the petitioner made a site inspection on 12.01.2011 and submitted his detailed report, but did not mention the use of local material and thereby gave a coverage to the illegality committed by the contractor and associated Engineers. The Department has decided to initiate a proceeding against number of officers, including petitioner and in pursuance thereof, charge sheet in the form of Prapatra-Ka was served upon him wherein the basic allegation has been made that he has submitted the report, but did not mention the illegality committed by the contractor in connivance with the Engineer.

4. From the record it appears that one Ashok Kumar Singh, Superintending Engineer and one Nikhilendu Nikhil other Superintending Engineer had submitted the joint report wherein it has been mentioned in detail about the use of local material for the purposes of repairing the canal and in the report, it has been mentioned that about 61% local metals and materials have been used and on that account, the restoration work has been done using



sub-standard material. After receipt of the charge sheet, the petitioner participated in the enquiry, but the enquiry report itself shows that except the joint report, no witness has been examined and on the basis of joint report, the Enquiry Officer submitted the report giving details of fact and found that the petitioner was required to give the details and also ought to have given the information about the use of sub-standard quality of material, but in order to give a coverage or screening, he kept silence over wrong committed by the contractor. On the basis of report, the petitioner was served the second show cause and ultimately after consideration of reply of the petitioner, the punishment of reduction of 20% of pension has been inflicted.

5. It is well known principle of law that the onus lies upon the prosecution to prove the charge of misconduct against the delinquent, though the strict principle of evidence does not apply but theory of preponderance of probability does apply in the matter of a departmental proceeding to show the materials are sufficient for arriving to a finding of commission of misconduct, but in the present case, save and except the report, there is no other material for arriving to a conclusion. Mere submission of the report is not end of the work of the prosecution, but the author or who have known to the author, should have come forward to prove the



contents of the report, but the prosecution has not followed the procedure and straightway quoting verbatim from the joint report, became a basis for arriving to a finding of commission of misconduct. It will be relevant to place reliance on the judgment reported in **(2009) 2 SCC 570, *Roop Singh Negi vs. Punjab National Bank and others.***

6. The Court is of the view that the said report was to be proved through an oral evidence, but this aspect has not been followed in the departmental enquiry. Until the contents of the report is proved or the materials therein is proved, it cannot be used as piece of evidence against any person to his prejudice.

7. Though this Court will not act as court in appeal, but certainly will examine the fairness in the departmental proceeding, that is decision making process, not the decision, i.e. the ultimate outcome of the enquiry, unless finding is perverse, the Court would not interfere with the finding of Enquiry Officer. Reliance can be placed on judgment reported in **A.I.R. 1996 SC 484, *B.C. Chaturvedi vs. Union of India and others.*** As joint enquiry report has not be proved which is the sole basis, in such circumstance, finding of enquiry officer is vitiated on account of fact that there is no material which can take the shape of evidence and consequence is a perverse finding without any basis cannot be approved.



8. In such view of the matter, the order of punishment dated 05.01.2018, including the enquiry report is set aside, the matter is remanded back to the Disciplinary Authority and the enquiry will proceed after the stage of service of Prapatra-Ka and the enquiry proceeding should be completed within a period of six months from the date of receipt or production of a copy of this order and it is expected that the petitioner would extend the cooperation in early conclusion of the enquiry.

9. With the above observation and direction, this application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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