

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13190 of 2018

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Bijendra Kumar Ram Son of Sri Munishwar Das, Resident of Sriram Complex, Flat No. 201. Siddarth Nagar, Bailey Road, Jagdeopath, P.S.-Rupaspur, District-Patna-800014 at Present Chief Engineer Under Suspension Water Resources Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal secretary, Water Resources Department, Government of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Bihar Public Service Commission, Bihar, Patna through its Secretary.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. V.Y. Giri, Sr. Advocate Mr. Vinod Kumar
For the Respondent/s	:	Mr. Vinay Kriti Singh, Sr. Advocate (GA-2) Mr. Dhananjay Singh
For the BPSC	:	Mr. Sanjay Pandey

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
C.A.V. JUDGMENT

Date : 05-02-2020

The present writ petitioner seeks to challenge the order dated 20.09.2017 contained in Memo No. 1677 and also Memo No. 1031 dated 11.05.2018, whereby the second show-cause notice has been issued to the petitioner. The petitioner further prays for staying the departmental proceeding initiated in form 'K' by Resolution No. 1677 dated 20.09.2017 which is in utter violation of the letter of the General Administrative Department bearing Letter No. 15548 dated 06.12.2017 and also Letter No. 1893 dated 14.06.2011.

2. During the pendency of the writ application, the



petitioner was terminated from service vide order dated 19.07.2018 contained in Memo No. 1539 and thus the petitioner filed I.A. No. 5836 of 2018 for quashing the same which has also been allowed vide order dated 21.08.2018.

3. The factual matrix of the case can briefly be detailed as follows:-

- I. The petitioner who has an impeccable service record was functioning on the post of Chief Engineer, Flood Control and Water Drainage, Samastipur under the Water Resources Department. He was, however, suspended by notification contained in Memo No. 1615 dated 14.09.2017 from his duty for having been careless and negligent and for not taking sufficient interest to check the flood control and other important works. The allegation against the petitioner was that he was absent from duty on 13.08.2017 and negligent in not acting upon and taking care of the Kamla Balan Right Embankment at Kamla Balan 73.50 and 74.60 on order of “cut-hold” given to the Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Samastipur.
- II. By resolution contained in Memo No. 1677 dated 20.09.2017, it was alleged that since the petitioner was



absent from duty on 13.08.2017 and proper maintenance was not done along the embankment due to which heavy loss of life and property occurred which amounts to violation of Rule 3(iii) of the Government Servants Conduct Rules, 1976.

III. The petitioner filed his representation in defence of the aforementioned allegation on 30.10.2017, 07.11.2017, 17.11.2017 and 04.04.2018, but the Conducting Officer submitted his enquiry report ignoring all the facts and vide Letter No. 74 dated 27.04.2018, held that two charges had been proved against the petitioner and one charge had not been proved.

IV. By Department Letter No. 1031 dated 11.05.2018, a second show-cause was issued to the petitioner which was replied by him vide Letter dated 28.05.2018, whereby the petitioner asked for certain documents, but the Department refused to send the same as vide Letter No. 1240 dated 06.06.2018 and it was communicated to the petitioner that such documents were not relevant whereupon the petitioner filed his reply to the second show cause on 08.06.2018. However, the Department in hot-haste sent a proposal for a major punishment to the



petitioner to the Bihar Public Service Commission which necessitated the petitioner to file his representation on 28.06.2018 before the Bihar Public Service Commission. However, the Respondents took no notice of the petitioner's pleas and proceeded to pass final orders during the pendency of the present writ application.

4. Learned Senior Counsel for the petitioner further submits that the entire action of the respondents in imposing the punishment against the petitioner as also the entire departmental proceeding is in gross violation of the Bihar Government Servants (CCA) Rules right from the time of the issuance of the articles and framing of charge vide Letters No. 332 dated 03.01.2011 and Letter No. 10875 dated 24.08.2017 and, therefore, this Court may please to issue appropriate writ for setting aside the impugned orders for reasons stated hereunder.

5. Learned Senior Counsel appearing on behalf of the petitioner further submits that the entire proceeding is in gross violation of Rule 17(4) of the Bihar Civil Services Classification Control and Appeal Rules as not only was the petitioner denied the documents on the pretext that they were not relevant, the second show-cause which was duly answered by the petitioner was not considered by the respondents and during the



pendency of the writ application, the respondents have proceeded to pass the order of punishment on *non est* grounds stating that he was not available and that proper reinforcement of the embankment was not done by him. Learned Senior Counsel for the petitioner has drawn my attention to Rule 17 which is the procedure for imposing penalties. The relevant portion which is extracted hereunder:-

"17. Procedure for imposing major penalties-

(1)

(2)

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be



heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant:

(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and



(v) a copy of the order appointing the "Presenting officer".

6. Learned Senior Counsel, Mr. Giri, appearing on behalf of the petitioner further submits that as per the principles enunciated in the case of ***Roop Singh Negi vs. Punjab National Bank and others*** reported in ***(2009) 2 SCC 570***, the documentary evidence is not merely enough if it is produced, the same is also required to be proved by examining witnesses. It was further submitted that while passing an order of departmental enquiry, it was the duty of the disciplinary authority and the appellant authority to base its orders on recorded reasons as the same entails civil consequences and a duty was imposed on them to base their conclusions on the basis of evidence. Any enquiry report passed on conjecture and surmises could not be sustained. He thus submitted that the disciplinary authority having passed the impugned order without considering the second show-cause filed by the petitioner, the impugned orders stood vitiated and were fit to be set aside. In this context, learned Senior Counsel has referred to paragraph No. 23 of the aforementioned case which is extracted hereunder:-

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders



passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the [Evidence Act](#) may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence."

7. Learned Senior Counsel further submitted that in a similar case arising out of same event, this Court has considered the issue in C.W.J.C. No. 13155 of 2018 extract whereof is as follows:-

"9. From the perusal of the records and the order of punishment, it appears that the petitioner has been held guilty for his not informing the superior authorities about the piping in the embankment and that he was not available on telephone. In the order impugned, the explanation offered by the petitioner has not at all been adverted to.

10. The law with respect to departmental proceeding is very well settled by now. The explanation of a delinquent has to be considered and rejected before he is held guilty for the charges. In the order impugned, I do not find reference of any explanation of the petitioner and merely on the ground that he was not available on telephone and that no information was provided by him about piping in the embankment to the superior authorities, the petitioner has been subjected to the maximum punishment.



11. The impugned order further suffers from being strikingly disproportionate to the charges which have been levelled against the petitioner."

8. In the said case, the matter was remitted back to the disciplinary authority for a fresh consideration in accordance with law.

9. Learned Senior Counsel has also referred to the judgment in the case of ***Shweta Mishra Vs. the State of Bihar through its Chief Secretary & Ors.*** cited in ***2018 (1) PLJR 784*** wherein at paragraph No. 8, referring to earlier judgments of the Apex Court reported in ***(1999) 2 SCC 10 (Kuldeep Singh Vs. Commission of Police and Ors.)***, the Court held as follows:-

"In so far as the present case is concerned, although the petitioner has been shown caused on the complaint and to which she has also filed her reply but the intention to reduce the allegation into a formal disciplinary proceeding is not reflected in either of the show causes. In fact for the first time that the State as the disciplinary authority decided to initiate disciplinary proceeding against the petitioner vide Annexure-8 dated 27.11.2013 that while enclosing the copy of the charge memo, the disciplinary authority has directed the petitioner to file her reply before the Enquiry Officer which is contrary to the stipulations present in rule 17(3) of 'the Rules'. Though this mandatory procedure and the duty cast thereunder has been discussed by this Court in a number of judgments yet wisdom evades the State when it discharges the role of the disciplinary authority. The disciplinary authority without bothering to satisfy himself on the statutory requirements as present under 'the rules' mechanically decided on the



*enquiry and directed the petitioner to file his reply before the Enquiry Officer which is in teeth of the statutory prescriptions. According to Mr. Singh learned counsel for the petitioner though the charge memo refers to two evidences i.e the letter of the District Magistrate and the complaint of Arpana Tripathi but neither of the two have been examined on the evidence nor any person has appeared to prove the documentary evidence. In other words, the submission of Mr. Singh is that finding of the enquiry Officer which has been endorsed by the disciplinary authority is resting on no evidence. Reference is made to the Constitution Bench judgment of the Supreme Court reported in AIR 1964 SC 364 (**Union of India Vs. H.C. Goel**) more particularly paragraph 23 thereof and the judgment reported in (1999) 2 SCC 10 (**Kuldeep Singh Vs. Commission of Police and Ors.**) paragraph 10 wherein it has held that where a conclusion is resting on no evidence, it has to be held a perversity."*

10. It is thus submitted that the imposition of the penalty being wholly against the principles of law deserves to be quashed and the petitioner be reinstated in service. He further submits that the authorities be directed accordingly so that no further prejudice is caused to the petitioner.

11. Learned Senior Counsel Mr. Vinay Kirti Singh, G.A.-2 appearing on behalf of the State, has however strongly opposed the prayer of the petitioner and submitted that the petitioner has been found guilty of dereliction of duty and the show-cause being unsatisfactory, the petitioner has been imposed the punishment.



12. Learned Senior Counsel for the respondents submitted that after the enquiry was conducted against the petitioner vide Letter No. 74 dated 27.04.2018 holding the petitioner of guilty of charges, the said enquiry report was examined by the disciplinary authority who agreed with the findings and conclusion of the Enquiry Officer. It was further submitted that as such two show-cause notice was issued to the petitioner vide Letter No. 1031 dated 11.05.2018 (Annexure-5) enclosing a copy of the report, but the petitioner again demanded documents which was disallowed as the same were not relevant. It was submitted that on 08.06.2018 vide Letter No. 11, the petitioner submitted his reply which was examined in the light of the written defence of the petitioner, the enquiry report and other materials available on record and the charges were found proved against the petitioner. As such, the matter was referred to the Bihar Public Service Commission for its concurrence on the proposed punishment. It was thus submitted that the procedure followed by the respondents is wholly regular and valid and the departmental proceeding has been concluded after due observance of the principle of natural justice. Thus, the orders impugned are wholly sustainable and do not require any interference by this Court. The writ application is, thus, fit to be



dismissed.

13. Learned counsel has also referred to a judgment reported in ***PLJR 1987 (1) 95 (Girjanandan Singh Vs. State of Bihar)*** wherein at paragraphs No. 16 and 17 it has been categorically held as follows:-

“From the enquiry report it shall appear that the inquiring officer has appreciated the materials on record in an objective manner like a quasi judicial authority. In that connection, it may be pointed out that out of 12 charges he has exonerated the petitioner of charge nos. 4,5,6 7 and 10 baying that either they have not been substantiated or were baseless. Although he has made reference to the vigilance report and the report of the legislative committee, in his report, but his conclusion in respect of charge nos. 3, 11 and 12 are not based on those reports only but also on the admission of the petitioner, in his written statement. Charge nos. 3, 11 and 12 related placing order of P.V.C. pipes with the Patna Firm without publication of the notice inviting tender in any newspaper, at a cost of Rs. 113.02 lacs and at rates 43% to 85% higher than it is well known that even if some of the charges are established the order of dismissal/removal cannot be quashed in exercise of powers under Article 226 of the Constitution. In the case of State of Orrisa v. Bidyabhushan (AIR 1963 Supreme Court 779). It was pointed out as follows:-

‘If the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighted with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in



respect of some of the findings but not all. It appears that there had been violation of the rules of natural justice.'

Again in the case of Railway Board, New Delhi v. N. Singh (AIR 1969 Supreme Court 966) the same view was reiterated.

17. It is well known that this Court while examining the enquiry report or any order of removal based on such enquiry report does not act as a Court of Appeal and it cannot substitute its own opinion for the view expressed by the inquiring officer or the disciplinary authority. Of course if this Court is of the opinion that no reasonable man could have come to the conclusion arrived at by the inquiring officer or the disciplinary authority it may interfere with such order of removal. Similarly, if the High Court is of the view that the conclusion: arrived at by the disciplinary authority is based on a evidence then certainly it can interfere. In the present case, the finding of the inquiring officer is based on admitted facts so far the main charges are concerned. This Court always extends its hand to help an officer who has been punished by adopting a procedure which is against statutory rules or against the principles of natural justice. But, in the facts and circumstances of the present case, I am of the view that neither there has been any breach of any statutory rule nor of any principles of natural justice."

14. As such, he contended that there was no occasion for this Court to interfere in the impugned order of punishment.

15. I have learned Senior Counsel for the petitioner and learned Senior Counsel appearing appearing on behalf of the respondents and perused the impugned order and also the



procedure adopted by the authorities. It appears from a bare perusal of the charge issued to the petitioner under Rule 17(iii) indicates that the only allegation against him was that the petitioner was not present at the time of joint inspection of the embankment which was conducted by the District Magistrate and the Superintendent of Police, Darbhanga at the time when the water level had risen on the western Kamla Balan embankment and as a result thereof, there has been damage to the said embankment resulting in loss of life and thus the petitioner by being absent had practiced gross dereliction of duty. A bare perusal of the enquiry report and a comparison of the same with the impugned order reveals that they are but *verbatim* reproduction of the same and no fresh consideration has been accorded to the reply to the show-cause notice filed by the petitioner. It is submitted that whatever contentions were made by the petitioner in the reply filed by him, the same was not considered which amounts to gross violations of the principles of natural justice which also appears that the absence of the petitioner has also not been proved on the basis of cogent evidence let in the enquiry. The petitioner having squarely denied his absence and also having furnished the call detail records of his personal number of the relevant date i.e.,



13.08.2017 was not gone into at all by the authorities and ignoring the same, the authorities have mechanically passed orders against the petitioner terminating him from service which smacks of nothing but an arbitrary exercise of power warranting interference by this Court. It also appears that no evidence was led at any stage regarding the presence of the petitioner by adverting to other statements made by the witnesses and, if at all, they were made, it is also not clear as to whether any opportunity was given to the delinquent to cross-examine them.

16. It thus appears that there has been gross violation of the Rules as envisaged under Rule 17 of the Bihar Government (CCA) Rules, 2005.

17. It also appears from the order dated 08.07.2019 passed in C.W.J.C. No. 13155/2018, that this Court has remitted back the matter after quashing the impugned order.

18. In view of the aforementioned facts and circumstances and having come to the considered opinion that action of the respondents in recommending the termination of the petitioner is in gross violation of the Rules and also the principle of natural justice, this Court is but wholly inclined to quash the impugned order of punishment whereby the petitioner's services have been terminated vide Memo No. 1540.



19. The aforementioned orders stand quashed and the petitioner is directed to be reinstated in service.

20. The writ application is allowed with liberty to the disciplinary authority to proceed from the stage where the action impugned has been challenged i.e., after the filing of reply to the show-cause and after due consideration of all facts and circumstances and after giving clear-cut findings on the grounds furnished by the petitioner, the authorities shall pass fresh orders in accordance with law.

21. The writ application stands disposed off.

(Anjana Mishra, J.)

Saif/-

AFR/NAFR	
CAV DATE	09.01.2020
Uploading Date	07.02.2020
Transmission Date	

