

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17810 of 2018

=====

Mithilesh Kumar Singh Son of Sri Jibachh Prasad Singh Resident of B - 402,
Lakshmi Heritage Apartment, Anandpuri West Boring Canal Road, P.S. Sri
Krishnapuri, District - Patna - 800001.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna.
3. The Principal Secretary, General Administration Department, Government
of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Govt. of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ansul
For the Respondent/s	:	Mr. Vinay Kriti Singh- GA2
		Mr. Kunal Tiwary, AC to GA 2

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 12-11-2020 Heard both sides.

The matter has been taken up through video
conferencing.

In this writ petition, the petitioner seeks following
reliefs:-

(A) For issuance of an appropriate writ, quashing notification
No. 1538, dated 19/7/2018 (Annexure-1) by which petitioner
has been dismissed.

(B) For issuance of an appropriate writ commanding the
respondents to reinstate the petitioner with all consequential
benefits of service including arrears of salary and other benefits.

(C) For issuance of appropriate writ/ writs which may be



necessary for redress the grievances of the petitioner.

The factual matrix of the case is that the petitioner was appointed on the post of Assistant Engineer in the Water Resources Department, Government of Bihar. The petitioner was promoted to the post of Executive Engineer. While the petitioner was posted as Executive Engineer, Flood Control Division-II, Jhanjharpur the petitioner was suspended vide order dated 14.09.2017, as contained in memo No. 1613, on the allegation that petitioner neglected the work of flood control and he was absent from his duty, thus, he committed gross negligence in performing his duties. Sri Rajeev Kumar, the Joint Secretary, Water Resources Department, Government of Bihar was appointed as Enquiry Officer and Sri Dilip Kumar, Executive Engineer, Flood Control Division-8 was appointed as Presenting Officer. The charges were framed. The petitioner filed petition on 06.10.2017 before the Enquiry Officer to provide him documents so that he may file effective show cause but no paper has been provided to the petitioner and the Enquiry Officer submitted his report holding the petitioner guilty and petitioner was asked to give his reply to second show cause notice and thereafter the petitioner was dismissed from service.

The learned counsel for the petitioner submits that the



petitioner appeared before the Enquiry Officer. The petitioner filed petition before the Enquiry Officer to supply documents so that he may file his explanation. The Enquiry Officer by order dated 26.09.2017 directed the Presenting Officer to supply the documents required by the petitioner but the Presenting Officer did not supply the documents. The Enquiry Officer again directed the Presenting Officer on 06.10.2017 to make the documents available but no document was made available to the petitioner. The petitioner without the documents submitted his explanation to the charges. The Enquiry Officer after having received the explanation of the petitioner sent the matter to the Joint Secretary of the department to give his opinion and the departmental proceeding was fixed on 31.10.2017. The Joint Secretary did not submit his opinion and the matter was adjourned for several dates. Thereafter, the departmental opinion was given and the enquiry was closed. The Enquiry Officer fixed the matter for orders on 07.05.2018. After receipt of the enquiry report the Joint Secretary, Water Resources Department, vide letter dated 22.05.2018 called upon the petitioner to file reply to the second show cause. It is submitted that the Presenting Officer did not adduce any evidence before the Enquiry Officer as prescribed under Bihar Government Servants



(Classification, Control and Appeal) Rules, 2005, (hereinafter referred to as the Bihar CCA Rules, 2005) and there is no evidence to hold the petitioner guilty. There is specific procedure prescribed for holding departmental enquiry under Rule 17 of Bihar CCA Rules, 2005 and the impugned order is not sustainable in the eye of law. In support of his contention the learned counsel for the petitioner drew the attention of this court to Annexure-5 which is the order sheet of the Enquiry Officer.

As per contra, Mr. Kunal Tiwari, the learned AC to GA 2, submits that the petitioner had earlier moved this court by filing CWJC No. 13122 of 2018 for setting aside letter No. 1678 dated 20.09.2017 by which departmental proceeding was initiated against the petitioner and without withdrawing that writ petition the petitioner filed the present writ petition. It is further submitted that the Enquiry Officer submitted the enquiry report vide letter No. 91 dated 14.05.2018 after holding the petitioner guilty of the charges and the enquiry report was examined by the Disciplinary Authority. The Disciplinary Authority agreeing with the finding of the Enquiry Officer asked second show cause from the petitioner. It is submitted that after enquiry the Enquiry Officer followed the entire procedure as prescribed under Rule 17 of Bihar CCA Rules, 2005 and submitted his



report as and there is no illegality in the order dismissing the petitioner from service after finding the petitioner guilty of the charges levelled against him.

Having considered the submission of both sides, so far objection of the respondents that petitioner without withdrawing CWJC No. 13122 of 2018 filed the present writ petition and, therefore, the same is not maintainable, I find no force in the submission of the respondents as CWJC No. 13122 of 2018 was filed by the petitioner against initiation of departmental proceeding and once the departmental proceeding is concluded the writ petition has become infructuous. Thereafter, the petitioner filed the present writ petition for setting aside the order of his dismissal which can not be held to be not maintainable.

The only question arises for consideration as to whether the Enquiry Officer held the enquiry in accordance with the procedure as laid down under Rule 17 of Bihar CCA Rules, 2005. Sub Rule 14 and 15 prescribe the mode for holding enquiry and producing evidence and it would be apt to reproduce the same which reads as follows:-

“(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on



behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice:

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.”

From perusal of the provisions as contained in Sub Rule 14 and 15 of Bihar CCA Rules, 2005 it is crystal clear that the Enquiry Officer shall ask the Presenting Officer to produce the oral and documentary evidence and the evidence shall be produced in accordance with law and the proceedee shall cross examine the witness, if any, who is giving either oral evidence or is presenting the documents. Of course, the strict Rules of



evidence is not followed in a departmental proceeding but at the same time it is mandatory to produce the oral as well as documentary evidence in accordance with law and as provided under Rules. If no document is produced and brought on record in accordance with law during the course of enquiry and any new document is presented by the Presenting Officer before the Enquiry Officer, such document cannot be deemed to be evidence and no reliance can be placed on such document. Non production of evidence in accordance with law amounts to violation of principles of natural justice and on the basis of such documents which are not produced in accordance with procedure as laid down thereunder the Enquiry Officer cannot based his enquiry report on such documents. From perusal of Annexure-5, which is the order sheet of the Enquiry Officer, it appears that the enquiry starts from 21.09.2017. By order dated 26.09.2017 the Enquiry Officer directed the Presenting Officer to make available all the required documents to the proceedee but the order does not show that any such document was handed over to him and 06.10.2017 and next date was fixed. On 23.10.2017 the petitioner presented his show cause and the same was sent to the department for opinion. The matter remained pending for the opinion department and the enquiry was



adjourned on many dates for obtaining the opinion of the department. On 07.05.2018 the Enquiry Officer received the opinion of the department and on that date the order was reserved. From the perusal of the entire order sheet it appears that after receiving the defence to the charges filed by the petitioner the Enquiry Officer never asked the Presenting Officer to examine the witnesses and produce the documents in accordance with the procedure as laid down under Sub Rule 14 and 15 of Bihar CCA Rules, 2005. The Enquiry Officer submitted his report on the basis of show cause of the petitioner and on the basis of opinion of the department. Thus, I find that enquiry report of the enquiry conducting authority is based on no evidence and no punishment can be inflicted on such report of the Enquiry Officer based on no evidence on the proceedee. The Disciplinary Authority on the basis of such enquiry report dismissed the petitioner from service, therefore, I find that that order of dismissal from service of the petitioner is not sustainable in the eye of law.

In the result, this writ petition is allowed and the impugned letter No.1538 dated 19.07.2018 (Annexure-1) is set aside. The matter is remitted to the Enquiry Officer to hold the enquiry afresh in accordance with law and submit its report



within six months.

Let the original records of departmental proceeding be
handed over to the learned counsel for the State.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

