

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8618 of 2011

Tarkeshwar Prasad Singh, son of Late Haribansh Prasad Singh, resident of Ward No.-7, Chakla Nirmali, Supaul, P.S.- Supaul, District- Supaul

... .. Petitioner

Versus

1. The State of Bihar
2. That Commissioner-Cum-Head Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna-800015
3. The Engineer-In-Chief - Cum - Special Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna-800015
4. The Deputy Secretary to the Government in the Department of Water Resources, Government of Bihar, Sichai Bhawan, Patna-800015
5. The Under Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna-800015
6. The Chief Engineer, Water Resources Department, Purnea
7. The Superintending Engineer, Canal Circle, Water Resources Department, Purnea
8. The Executive Engineer, Irrigation Division No.1, Water Resources Department, Purnea as well as Irrigation Division, Water Resources Department, Bathnaha, Araria
9. The Executive Engineer, Irrigation Division, Water Resources Department, Katihar
10. The Deputy Secretary, Water Resources Department, Government of Jharkhand, Ranchi
11. The Chief Engineer, Water Resources Department, Government of Jharkhand, Ranchi
12. The Superintending Engineer, Yojana Ayojan Anchal - cum - Uran Dasta, Water Resources Department, Government of Jharkhand, Ranchi
13. The Superintending Engineer, Tenu Ghat, Dam Circle, Water Resources Department, Government of Jharkhand at Tenu Ghat, Distt.- Bokaro (Jharkhand)
14. The Executive Engineer, Konar Canal Division, Water Resources Division, Bagodar, District- Giridih(Jharkhand)
15. The Executive Engineer, Tenu Ghat, Dam Division, Water Resources Department, Tenu Ghat, Right Band, District- Bokaro(Jharkhand)
16. The Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro(Jharkhand)
17. Then Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro(Jharkhand), C/O The Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro (Jharkhand)
18. Shree Madhav Prasad Singh, then Junior Engineer, Tenu-Bokaro Canal Sub



- Division, Khanjo, Tenu Ghat, District- Bokaro (Jharkhand), C/O the Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro (Jharkhand)
19. Shree Balram Pandey, then Junior Engineer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro (Jharkhand), C/O the Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro (Jharkhand)
 20. Md. Habib, Then Employee, Tenu-Bokaro Canal Sub Division Khanjo, Tenu Ghat, District- Bokaro Jharkhand, C/O The Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro Jharkhand
 21. Shree Deoki Kewat, then Employee, Tenu-Bokaro Canal Sub Division Khanjo, Tenu Ghat, District- Bokaro (Jharkhand), C/O the Sub Divisional Officer, Tenu-Bokaro Canal Sub Division, Khanjo, Tenu Ghat, District- Bokaro (Jharkhand)
 22. The Sub Divisional Officer, Konar Irrigation Sub Division, Water Resources Department, Saraiya, District- Giridih (Jharkhand)
 23. Shree P.C. Sahu, then Sub Divisional Officer, Konar Irrigation Sub Division, Water Resources Department, Sariya, District - Giridih (Jharkhand), C/O the Sub Divisional Officer, Konar Irrigation Sub Division, Water Resources Department, Saraiya, District- Giridih (Jharkhand)

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Verma
For the Respondent/State of Jharkhand	:	Mr. Satyavrat Verma, Adv. Mr. Shashank Chandra, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

10 13-02-2020 The petitioner, at the relevant point of time, was posted as Junior Engineer, Tenu Ghat Dam Division no.1, Tenu Ghat, Giridih (presently in the State of Jharkhand), when a departmental proceeding was initiated against him on 05.11.1985 in accordance with Rule 55 of Civil Services (Classification, Control & Appeal) Rule, 1930, which was in vogue, at that point of time. Prior to initiation of the said



departmental proceeding, the petitioner was put under suspension. It was alleged in the charge memo that the petitioner had taken advance a sum of Rs.1000/- for handing over the charge of government materials in June 1976. He did not hand over charge of the government materials and one year thereafter, he had submitted defective and incorrect voucher in respect of the said advance money of Rs.1000/-, which could not be adjusted as it could not be passed. The Sub Divisional Officer, according to chargesheet, had directed the petitioner to return the said amount of Rs.1000/-, which he did not return. Allegedly, on 30.10.1978, the Chief Engineer, Irrigation, Ranchi had directed the petitioner to hand over the charge, but he failed to do so and he remained absent from there. This created suspicion in the mind of the disciplinary authority that the petitioner had misappropriated the government materials, approximated cost of which was quantified as Rs.2 Lacs. An enquiry officer and a representing officer were appointed. The order of suspension was ultimately revoked in May, 1991. The enquiry authority submitted his report, a copy of which has been brought on record by way of Annexure-4 to the writ application. It appears from the report of the enquiry authority that he was second enquiry authority, who had been appointed for holding



the departmental enquiry.

2. I have perused the report of the enquiry authority, which is at Annexure-4 to the writ application. The finding of the enquiry authority does not indicate that there was any material to reach a conclusion that any government material was misappropriated by the petitioner. The enquiry authority found that the charge against the petitioner of not handing over the charge and failing to take care of safety and security of the government material was proved. He also held that the petitioner was responsible for not returning the advance money, which he had taken to the tune of Rs.775/-. Based on the report of the enquiry authority, the disciplinary authority imposed following punishment;-

A sum of Rs.775/-, which the petitioner failed to get adjusted against the advance, which he had taken, and another sum of Rs.2,28,505/- being the value of the articles in his charge for shortage of materials shall be recovered from arrears of salary of the petitioner and subsistence allowance.

3. By the impugned order dated 02.12.1994, the petitioner's service from 01.06.1977 to 28.10.1985 was decided to be treated on duty. For the period, during which the petitioner had remained suspended, it was decided that he would not be



getting any emoluments over and above the subsistence allowance. In peculiar circumstances of the case, the petitioner's joining was accepted with effect from 01.07.1991.

4. Against the said order dated 02.12.1994, the petitioner preferred a representation. On the petitioner's representation, an order was passed on 25.02.1999 by the government to the effect that the decision of the disciplinary authority to recover the amount of Rs.2,28,505/- shall remain in abeyance and a fresh enquiry shall be conducted in that regard.

5. It appears that the Superintending Engineer, Tenu Ghat, Dam Circle, Water Resources Department, Government of Jharkhand, was asked to enquire into the matter. Before any report could be submitted on the basis of re-enquiry, as ordered by the State Government, as noted above, the petitioner, after attaining the age of superannuation, retired with effect from 30.11.2007. Thereafter, the Deputy Secretary, Water Resources Department, Jharkhand through letter dated 01.11.2008 made available the report to the enquiry officer. The enquiry officer found deficit of article worth Rs.2,28,505/-, which was under the petitioner's charge. Based on the said report, the department decided to recover the said amount of Rs.2,28,505/- from the pensionary benefits of the petitioner. The petitioner preferred an



appeal, which has been dismissed by an order dated 06.10.2009 (Annexure-11).

6. Assailing the impugned order, learned counsel appearing on behalf of the petitioner has submitted that the charge, in relation to the loss of government property because of the alleged lack of care and precaution by the petitioner was based on mere suspension, as can be seen from the memo of charge. He has submitted that neither the report of the enquiry officer nor the order passed by the disciplinary authority on the report of the enquiry officer reflects the application of mind on the petitioner's representation against the charge. He has submitted that since there was no material for the enquiry officer to hold the charge against the petitioner proved and the disciplinary authority, who had agreed with the finding of the enquiry officer on the petitioner's representation, the decision to recover the amount was stayed by the department itself. He has further submitted that it is not apparent from the subsequent order of the disciplinary authority dated 18.03.2009 as to what materials were there before the enquiry officer, to whom the re-enquiry was assigned. He has submitted that the findings are based on conjectures and surmises and in no case, in the absence of any finding of misappropriation of the articles by the



petitioner, the penalty of recovery of sum of Rs.2,28,505/- could have been imposed under the Bihar Pension Rules after the petitioner's superannuation.

7. Learned counsel appearing on behalf of the State of Jharkhand has contended that the report of the enquiry officer on re-enquiry is based on materials and this Court may not interfere with the finding recorded by the officer in his report submitted after re-enquiry.

8. I have carefully perused the report of the enquiry officer and the impugned orders dated 18.03.2009 passed by the disciplinary authority and the order dated 06.10.2009 passed by the appellate authority.

9. On close scrutiny of the order passed by the appellate authority, it can be easily said that it does not contain any discussion on the petitioner's plea in his memo of appeal. The appellate authority has not at all discussed in his order as to why a plea taken by the petitioner in his appeal was not acceptable to him. The order of the appellate authority requires interference on the ground of lack of reason. Coming back to the order dated 18.03.2009, I find that the said order also does not record any finding that the petitioner was responsible for misappropriation of articles, which were under his charge. He



has simply relied on the report of the enquiry after re-enquiry.

10. The impugned orders dated 18.03.2009 and 06.10.2009, in my view, are not sustainable.

11. Normally, I would have remanded the matter back to the disciplinary authority to take afresh decision, but since the petitioner retired in the year 2007 and the proceeding was initiated in the year 1985, I have refrained from doing so.

12. The writ application is, accordingly, allowed.

13. In view of the above, the petitioner will be entitled to all the consequential benefits. If any amount has been recovered from the pensionary benefits of the petitioner, which he is entitled to retain, shall be refunded to the petitioner within one month from the date of receipt/production of a copy of this order.

(Chakradhari Sharan Singh, J.)

nawalkrs/-

U			
---	--	--	--

