

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21514 of 2018

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Sharda Chaudhary Son of Late Parmeshwar Chaudhary Resident of Village-
Beri, Police Station- Salaiya, in the District of Aurangabad, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
 2. The Engineer-in-Chief-cum-Special Secretary Public Health Engineering
Department, Govt. of Bihar
 3. The Chief Engineer, Mechanical P.H.E.D Govt. of Biha, Patna
 4. The Superintending Engineer, P.H.E.D Sasaram Circle Sasaram
 5. The Executive Engineer, P.H.E.D, Bhabhua Division, Bhabhua
- Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jagannath Prasad, Adv.
For the Respondent/s : Mr.Arvind Ujjwal -Sc4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 09-07-2021

Heard learned counsel for the petitioner and learned counsel
appearing on behalf of respondents.

Petitioner is aggrieved by the order of dismissal passed in
departmental proceeding in a trap, petitioner was apprehended and
thereafter respondents have decided to initiate a departmental
proceeding.

It is the contention of the petitioner that before inflicting
major punishment in a case where the departmental proceeding is
pending, it was incumbent upon the respondent to prove the charges in
the departmental proceeding but neither any witness was examined nor
any document was proved and till date no finding was recorded by the
respondents about the guilt of the petitioner.



Learned counsel for the petitioner submitted that the respondents have issued second show cause notice but they have not enclosed the copy of the enquiry report. In para 18 to the counter affidavit the respondents have made following statement for ready reference, which is quoted below:

“18. That the contention of the petitioner is that he has not been supplied the copy of the enquiry report is not sustainable in the eyes of law, since the petitioner in his reply to 2nd show cause never raise such objection that he has not been supplied copy of enquiry report. The petitioner also did not raise the objection that he has not been supplied such documents he has demanded during the departmental proceeding.”

It is the contention of the respondents that the petitioner has not raised issue in the second show cause reply and therefore he has not been supplied such document.

Learned counsel for the petitioner would submits that the petitioner has not raised the issue of non-supply of the documents on which the charges have been framed. He has also not raised the issue of non-supply of inquiry report. It has been decided by the Apex Court in case of ***Union of India Vs. Md. Ramzan Khan*** reported in ***A.I.R. 1991 SC 471***.

In view of law laid down by the Apex Court in case of ***Union of India Vs. Md. Ramzan Khan*** reported in ***A.I.R. 1991 SC 471*** the order inflicting the punishment cannot be sustained. It is accordingly quashed.



The matter is remitted back for fresh decision from the stage of issuing second show cause notice enclosing inquiry report.

Petitioner shall be liberty to raise the issue of non examination of any witness including the witness in the trap case during course of departmental proceeding or any documentary evidence in course of departmental proceeding which is mandatory in view of law laid down by the Apex Court in *Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant & Ors.* reported in *(2001) 1 SCC182*.

In view of the above, the order of dismissal is quashed.
The matter is remitted back for decision afresh.

(Anil Kumar Upadhyay, J)

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