

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9330 of 2020

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Raj Kumar Srivastava son of Late Nagendra Prasad Srivastava resident of 246, Urmila Bhawan, Rustampur, Canal Road, Near Durga Mandir, Gorakhpur, P.S.- Cantt., District- Gorakhpur (Uttar Pradesh) presently residing at A-21, Sachiwalaya Colony, Kankarbagh, P.S.- Patrakar Nagar, District- Patna- 20.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Joint Secretary, Water Resources Department, Government of Bihar, Patna-cum- Enquiry Officer.
3. The Additional Secretary, Water Resources Department, Bihar, Patna.
4. The Engineer-in-Chief, Water Resources Department, (Headquarter), Government of Bihar, Patna.
5. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Muzaffarpur.
6. The Superintending Engineer, Flood Control Circle, Sitamarhi.
7. The Executive Engineer, Flood Control Planning and Monitoring Division 18, Water Resources Department, Patna-cum- Presenting Officer.
8. The Executive Engineer, Bagmati Division, Runni Saidpur, Sitamarhi.
9. The Assistant Engineer, Bagmati Sub Division, Runni Saidpur, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi, Advocate Mr.Indu Bhushan, Advocate
For the State	:	Mr. Harish Kumar, GA-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 27.07.2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.



2. The present writ petition has been filed for quashing the order passed by the Engineer-in-Chief (Headquarter), Water Resources Department, Government of Bihar, Patna dated 28.09.2018, whereby and whereunder the petitioner has been inflicted with the punishment of reduction to two lower scale in time scale of pay permanently and further it has been directed that the petitioner shall not be paid any pay increments in future. The petitioner has also prayed for quashing of the order dated 04.10.2019, passed by the Additional Secretary, Water Resources Department, Bihar, Patna, whereby and whereunder the appeal of the petitioner has been rejected.

3. The brief facts of the case are that the petitioner was initially appointed on the post of Junior Engineer, in the Water Resources Department, Bihar, Patna on 25.04.1988 and was posted at Chapra, whereafter he was transferred to various places and finally when he was posted at Bagmati Division, Runni Saidpur, Sitamarhi on the post of Junior Engineer, there was breakage in the Lalbakiya *bund* on the alleged date and time of occurrence as also the Ring Bund in the village Dhanaur, Katra was incomplete apart from no information having been given to the higher authorities as also dowel having not been constructed, to prevent flow of water, which had resulted in



water logging and huge loss of property and erosion by the flood water. The petitioner has been alleged to have taken no precaution to avoid the aforesaid situation and moreover, he had also not informed anyone regarding the same.

4. Thereafter, a departmental inquiry was held and a report was submitted on 18.08.2017, whereupon it was decided to initiate disciplinary proceedings against the petitioner. The disciplinary authority had then initiated the departmental proceedings by an Order dated 22.09.2017 (Annexure-4 to the present writ petition), and *Praptra-K* was issued to the petitioner, wherein two charges were leveled against the petitioner, one regarding breakage of bund and the other one to the effect that though the petitioner was aware about the Ring Bund being incomplete but still he neither gave any information to his higher authorities about the unexpected rise in water level nor he got dowel etc. constructed to prevent flow of water, on account of which flood water spread to the villages in the country side resulting in water logging and huge loss of life and property as also erosion. The Enquiry Officer had then conducted the departmental enquiry and submitted an enquiry report dated 10.05.2018, finding the charge No. 1 to have not been proved while the charge no. 2 was found to have been



proved on the basis of the report of the then Chief Engineer, Flood Control & Drainage, Water Resources Department, Muzaffarpur dated 18.08.2017. The disciplinary authority had then issued a second show cause notice dated 11.05.2018 to which the petitioner had filed his reply, nonetheless the impugned order dated 28.09.2018 has been passed by the respondent no. 4, as against the petitioner, inflicting the punishment of reduction to two lower scale in time scale of pay permanently and disentitling the petitioner to any pay increments in future. The petitioner had then filed an appeal, however, the same has also been rejected by the impugned order dated 04.10.2019.

5. The learned counsel for the petitioner Shri Siyaram Shahi has made a simple submission to the effect that the present case is a case of no evidence and in fact the only evidence relied upon by the prosecution in the departmental enquiry was the report of the Chief Engineer dated 18.08.2017, however, neither the same was ever exhibited during the course of the departmental enquiry nor the said Chief Engineer, who is the maker of the said report dated 18.07.2018, was ever examined so as to grant an opportunity to the petitioner to cross-examine the said Chief Engineer, hence admittedly there has



been violation of the principles of natural justice. The learned counsel for the petitioner has relied upon a judgment reported in **2019(2) PLJR 524** (Amarendra Prasad Vs. Bihar State Financial Corporation and Ors.) to submit that in absence of any oral/ documentary evidence, the charges cannot be said to have been proved and moreover by virtue of Article 311(2) of the Constitution of India, the departmental enquiry has to be conducted in accordance with the rules of natural justice, hence the employee is required to be given reasonable opportunity of being heard before punishment is imposed. In this connection, the learned counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court in the case of **State of U.P. vs. Saroj Kumar Sinha**, reported in **2010(2) SCC 772**, paragraph nos. 27, 28 and 29 whereof are reproduced herein below:-

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the



charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.”



6. Per contra, the learned counsel for the State Shri Harish Kumar, GP-8 has submitted that there is no lacuna, as far as conduct of the departmental proceeding is concerned and the same has been conducted in a proper manner. It is further submitted that this Court would not re-appreciate the evidence and sit over the decision of the disciplinary authority as an appellate authority. In this regard, the learned counsel for the State has referred to a judgment reported in **(2015) 2 SCC 610** (*Union of India vs. P. Gunasekaran*).

7. I have heard the learned counsel for the parties and perused the materials on record from which I find that admittedly no oral evidence has been led by the prosecution i.e. the respondent-State and in fact no document has been exhibited so as to bring home the guilt of the petitioner, hence this Court is of the view that the present case is a case of no evidence and is squarely covered by the law laid down by the Hon'ble Apex Court in the case of **Saroj Kumar Sinha** (supra). This Court also finds that there is an admitted breach of the principles of natural justice since the petitioner has not been granted a reasonable opportunity to defend himself, inasmuch neither the report of the Chief Engineer dt. 18.08.2017, relied upon by the Enquiry Officer to hold that the charge no. 2 has stood proved, has been



provided to the petitioner nor any opportunity was granted to the petitioner to cross-examine the maker of the said report dated 18.07.2018 i.e. the then Chief Engineer concerned, who was in fact never produced before the Enquiry Officer as a witness.

8. Having regard to the facts and circumstances of the case and considering the materials available on record as also taking into account the submissions advanced by the Ld. Counsel for the parties, this Court finds that the enquiry report dated 10.05.2018 stands vitiated in the eyes of law since the same is based on no evidence inasmuch as the prosecution has failed to either lead any oral evidence or prove the documents being relied upon, during the course of the enquiry proceedings, hence the aforesaid enquiry report dated 10.05.2018 is fit to be quashed, more so, since the present case is squarely covered by the law laid down by the Hon'ble Apex Court in the case of Saroj Kumar Sinha (supra) and in the case of Roop Singh Negi vs. P.N.B. & ors., reported in (2009) 2 SCC 570. This Court further finds that the enquiry report is also fit to be set aside on the ground of denial of any opportunity to the petitioner to present his defence to the report of the Chief Engineer dt. 18.08.2017, relied upon by the Enquiry Officer to hold that the charge no. 2 has stood proved. Consequently, the enquiry report



dated 10.05.2018 is set aside. As a consequence of setting aside of the enquiry report dated 10.05.2018, the order of punishment dated 28.09.2018, passed by the respondent no. 4 and the appellate order dated 04.10.2019 passed by the respondent no. 3 have got no legs to stand inasmuch as they are based on the enquiry report dated 10.05.2018, hence are also quashed.

9. As a result of setting aside of the enquiry report dated 10.05.2018, the order of punishment dated 28.09.2018 and the appellate order dated 04.10.2019, the matter is remitted back to the disciplinary authority with liberty to proceed afresh against the petitioner from the stage of conduct of the departmental enquiry.

10. The writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	14.10.2021
Transmission Date	

