

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12980 of 2017

Naresh Prasad Sinha, Son of Late Kailash Praasd Sinha, Resident of Village-Goshi Dist.-Jahanabad. At Present-Qr.no-B/12 Ganga Bridge Colony, P.S.-Hazipur Dist.-Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Bisheshariya Bhawan, Bailey Road, Patna.
3. The Secretary, Rural Works Department, Bisheshariya Bhawan, Bailey Road Patna.
4. The Additional Secretary, Rural Works Department, Bisheshariya Bhawan Bailey Road, Patna.
5. The Engineer-in-Chief-Cum-Special Secretary, Road, Construction, Department Bisheshariya Bhawan, Bailey Road, Patna.
6. The Engineer-in-Chief, North Bihar Cum Enquiry Officer, Road Construction Department, Dharbhanga.
7. The Deputy Secretary, Road Construction Department, Bishweshariya Bhawan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr.Mahendra Pd. Verma, AC to SC-20

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-10-2021

The petitioner has put to challenge an office order No. 11 dated 24.02.2014, issued under the signature of the Additional Secretary, Rural Works Department, Government of Bihar, whereby punishment of dismissal from service has been imposed upon him. His appeal against the order of dismissal has been rejected, as communicated to him through letter dated 27.06.2014, issued under the signature of the Special Secretary of the



Department, which is also under challenge in the present application.

2. At the relevant point of time, the petitioner was functioning as Junior Engineer under National Rural Employment Project Division, Muzaffarpur, under the said Department.

3. The substratum of the impugned disciplinary action is the petitioner's arrest by Vigilance Investigation Bureau on the allegation of corruption in the nature of demanding bribe from a beneficiary and receiving the same from the complainant. Allegedly, he was apprehended red-handed by a raiding team constituted by the Vigilance Investigation Bureau while accepting bribe, leading to registration of FIR bearing Vigilance P.S. Case No. 085/2006 dated 29.11.2006 for the offences punishable under Section 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

4. I have heard Mr. Akhilesh Dutta Verma, learned counsel for the petitioner and Mr. Mahendra Prasad Verma, learned AC to SC-20.

5. Admitted facts, which have emerged on the basis of the pleadings on record, are that consequent upon the petitioner's arrest by the Vigilance Investigation Bureau he was placed under suspension by an order dated 29.12.2006 with effect from the date



of his arrest. Subsequently, a charge-sheet was issued by an office order dated 10.12.2007 stipulating a departmental inquiry in accordance with the provisions under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the [BGS(CCA) Rules]. Rule 17 of BGS(CCA) Rules lays down the procedure for imposing major penalties. The charge-sheet in *Prapatra*- 'ka' is there on record. It was alleged against the petitioner in the charge-sheet that he was demanding gratification from the complainant Ram Naresh Singh for facilitating payment of wages to the labourers. On the basis of the complaint the petitioner was apprehended allegedly while taking a bribe of Rs. 3,000/- by a raiding team constituted by the Vigilance Investigation Bureau on 29.11.2006, whereafter he was remanded to judicial custody. An Inquiring Authority was appointed by the same office order dated 10.12.2007. A Presenting Officer was also appointed. The petitioner was directed to appear before the Inquiring Authority. Sub-rule (3) of Rule 17 of BGS(CCA) Rules requires, *inter alia*, that if an inquiry is proposed under the said Rule, the Disciplinary Authority shall draw up or caused to be drawn up a statement of imputations of misconduct or misbehaviour in support of the article of charge which shall contain, *inter alia*, a list of such documents by which, and a list of



such witnesses by whom, the articles of charges are proposed to be sustained. The charge-sheet, however, did not contain any list of witness(es). Letter No. 1015 dated 19.12.2006 received from the Cabinet (Vigilance) Department, Government of Bihar was the only document cited in the list of documents.

6. The petitioner denied the allegations in his response dated 17.06.2010 addressed to the Inquiring Authority and demanded supply of certain documents, as, according to him, those documents were essential for him to submit his effective defence. Dealing with the letter received from the Cabinet (Vigilance) Department dated 19.12.2006, the petitioner took a plea that by the said communication merely sanction for prosecution in criminal case was sought. It was further mentioned in the said communication that if any clarification was required from the Investigating Officer of the criminal case, he (the investigating officer) might be called. He further demanded a copy of the complaint petition of the complainant relying on the requirement as contained in the letter of the Personnel and Administrative Reforms Department, Government of Bihar dated 24.06.2005.

7. It appears that the petitioner was subsequently charged of non-cooperation in the departmental inquiry through communication dated 06.04.2010. The petitioner submitted his



reply on 26.08.2010 taking a plea that he was not communicated about the dates fixed in the departmental inquiry. The petitioner has brought on record his communication dated 26.08.2010 in this regard addressed to the Inquiring Authority. The petitioner subsequently submitted his detailed representation of defence on 27.01.2012 and while denying all the allegations, reiterated his demand for supply of certain documents which, according to him, were crucial for putting forth his defence during the departmental proceeding. He denied specifically the accusation against him of having demanded bribe in lieu of payment of wages to the labourers and questioned the correctness of the pre-trap and post-trap memoranda prepared by the said raiding party of the Vigilance Investigation Bureau. He asserted that, as a matter of fact, the raiding party had physically overpowered him and by way of a conspiracy, he was falsely and maliciously made an accused in the criminal case. He relied on the entries in the measurement book made by him as a Junior Engineer to make out a case that entry in respect of final measurement was made on 14.06.2006 itself before which the muster roll was verified and, therefore, there was no occasion for the petitioner to have demanded bribe.

8. The Inquiring Authority submitted his report on 30.03.2012, which is at Annexure-4 to the writ application. The



Inquiring Authority noted that during course of the departmental inquiry no person, who was present at the place of occurrence, was produced to be examined. Considering the clear denial of the petitioner of the allegations contained in the pre-trap and post-trap memoranda, the Inquiring Authority opined that no definite conclusion could be reached in the absence of any oral evidence of independent witnesses/ members of the raiding party. He accordingly concluded that the charge against the petitioner of demand and acceptance of bribe could not be proved during the departmental inquiry. In respect of additional charge that the petitioner did not appear before the Inquiring Authority from 27.01.2008 to 15.12.2009 he recorded that as the petitioner failed to submit any written statement of defence, the said allegation of having remained absent without any communication to the Inquiring Authority stood proved.

9. A copy of the inquiry report was supplied to the petitioner enabling him to make his representation against the findings recorded in the said report. The petitioner, responding to the said notice, submitted his reply on 20.09.2012. In respect of additional charge held to be proved by the Inquiring Authority he took a specific plea that his headquarter was fixed in the Headquarter, Executive Engineer, NREP, Muzaffarpur after he was



put under suspension. No date was ever communicated to him regarding the departmental inquiry, either directly or through the office of the Executive Engineer, NREP, Muzaffarpur. He also asserted that before issuance of letter dated 06.04.2010, he did not have any information regarding any date fixed in the departmental inquiry initiated vide office order No. 348 dated 10.12.2007. It was thus his clear case that as no date was communicated to him for him to appear before the Inquiring Authority, the charge against the petitioner of not having appeared before the Inquiring Authority could not be said to be proved.

10. The Disciplinary Authority is said to have thereafter sent back the inquiry report through letter No. 8233 dated 18.12.2012 to the Inquiring Authority, disagreeing with the report of the Inquiring Authority, wherein the Inquiring Authority had opined that it was not possible to record a finding in the departmental proceeding in respect of the charge against the petitioner relating to demand and acceptance of bribe. The Inquiring Authority again submitted his report on 25.02.2013, holding that the charge against the petitioner of demand and acceptance of bribe also stood proved. A copy of the second inquiry report is available at Annexure-6 to the writ application. Even subsequently no material beyond what was available in the



departmental inquiry, based on which the inquiry report dated 30.03.2012 was submitted, was brought on record before the Inquiring Authority.

11. A copy of the second inquiry report was supplied to the petitioner seeking his comments. The petitioner is said to have not submitted his response despite reminders.

12. The Disciplinary Authority passed the impugned order dated 24.02.2014 agreeing with the findings recorded by the Inquiring Authority in its second report. The petitioner preferred appeal before the Departmental Secretary, who is admittedly the Appellate Authority. One sentence communication has been made to the petitioner through letter dated 27.06.2014 that his appeal has been dismissed. No order passed by the Appellate Authority has been brought on record.

13. Mr. Akhilesh Dutt Verma, learned counsel appearing on behalf of the petitioner has argued that the records suggest that the Inquiring Authority was forced by the Disciplinary Authority to record a finding that the charge against the petitioner relating to bribe was proved. He has submitted that the Inquiring Authority had rightly recorded in its earlier report dated 30.03.2012 that the said charge could not be said to be proved in the absence of any evidence. If the Disciplinary Authority was of the view that the



said finding recorded by the Inquiring Authority was not correct, he could have recorded his tentative notes of disagreement and supplied the same to the petitioner seeking his comments. Instead the Disciplinary Authority adopted a procedure unknown under the statutory BGS(CCA) Rules by remanding the matter back to the Inquiring Authority without examining as to whether there was any material available on record worth evidence to support the charge against the petitioner of demand and acceptance of bribe. In any view of the matter, he contends that there is absolutely no evidence adduced during course of departmental inquiry to substantiate the said charge and, therefore, the findings recorded by the Inquiring Authority and the Disciplinary Authority being perverse, require interference by this court. He has further submitted that neither the complainant nor any of the labourers were produced for examination on behalf of the Department. He has argued that the petitioner's explanation in respect of the charge against him of having not appeared before the Inquiring Authority has not at all been dealt with by the Disciplinary Authority in proper perspective.

14. Learned counsel representing the State of Bihar, on the other hand, has submitted that the papers made available to the Department by the Cabinet (Vigilance) Department were enough



to establish the petitioner's misconduct of demand of bribe and acceptance thereof. He has submitted that considering the gravity of the charge against the petitioner, the Disciplinary Authority has rightly imposed upon the petitioner punishment of dismissal from service. He has also argued that there has been due compliance of the principles of natural justice, inasmuch as, the petitioner was given adequate opportunity to defend his case in the departmental inquiry/ proceeding.

15. On perusal of the two inquiry reports submitted by the Inquiring Authority dated 30.03.2012 and 25.02.2013, it is manifest that there was no evidence adduced by the Department to establish the charge against the petitioner of having demanded or accepted bribe except for a communication received from the Cabinet (Vigilance) Department, Government of Bihar for seeking grant of sanction for criminal prosecution. Admittedly, the complainant was not examined. No other person, who could have supported the allegation in respect of bribe, was examined. No member of the raiding party was examined. No person present at the place of occurrence was examined. In such circumstance, the Inquiring Authority had rightly recorded in his earlier report dated 30.03.2012 that in absence of any evidence, the charge of acceptance of bribe could not be proved. He has though recorded



that it would be appropriate to take any decision in this regard on the basis of decision which may be taken by the Court in the criminal case. In his second report there is abrupt finding recorded to the following effect :-

"आरोपित पदाधिकारी के बचाव बयान एवं उक्त समीक्षा के आलोक में आरोपित पदाधिकारी के विरुद्ध आरोप प्रमाणित होता है।"

16. Though the Inquiring Authority in his second report recorded that in view of the written statement of defence of the petitioner and discussions noted in the report charge against the petitioner stands proved, he has not dealt at all with any evidence adduced during the inquiry. The finding of the Inquiring Authority is patently perverse. It can be easily gathered on the basis of materials on record that the Inquiring Authority was not allowed to act as an independent quasi judicial functionary under the influence of the Disciplinary Authority. The Disciplinary Authority has miserably failed to discharge his statutory duty as is expected of such authority acting under the provisions of the BGS (CCA) Rules. The Disciplinary Authority, after receiving the first report of the Inquiring Authority had forwarded a copy of the same to the petitioner for him to file a written representation/ submission, as stipulated under Rule 18(3) of the BGSCCA) Rules. While forwarding a copy of the first inquiry report, he did not record his



own finding which he could have done in exercise of said power under Rule 18(3) of the BGS(CCA) Rules.

17. After the petitioner submitted his representation the Disciplinary Authority sent the matter back to the Inquiring Authority to submit a report afresh as, according to him, the finding recorded by the Inquiring Authority was not acceptable. Forwarding of the inquiry report by the Disciplinary Authority to the petitioner without recording his own findings amounted to agreeing with the findings recorded by the Inquiring Authority in his first report dated 30.03.2012. After having done so, the course available to the Disciplinary Authority was as prescribed under Rule 18(4), 18(5) and 18(6) of the BGS(CCA) Rules.

18. In any view of the matter, it was obligatory on the part of the Disciplinary Authority to have considered the evidence on record before reaching a conclusion that the charge against the petitioner stood proved in the departmental proceeding. In my opinion, the decision rendered in case of ***Kuldeep Singh vs. Commissioner of Police and others*** reported in ***(1999) 2 SCC 10*** applied in this case with full force. Paragraphs 40 to 43 of the said judgment can be usefully taken into account to consider the correctness of the impugned action of the respondents which read as under :-



“40. To sum up, the charge against the appellant consisted of two components, namely:

(a) On 22-2-1990, Smt Meena Mishra paid Rs 1000 to the appellant for being paid to the three labourers.

(b) The appellant paid Rs 800 to the labourers and kept Rs 200 with himself.

41. Smt Meena Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day. The labourers to whom the payment is said to have been made have not been produced at the domestic enquiry. Their so-called previous statement could not have been brought on record under Rule 16(3). As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the enquiry officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.

42. The enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of “reasonable opportunity”, contemplated by Article 311(2) of the Constitution. The “bias” in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which



squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the enquiry officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".

43. For the reasons stated above, the appeals are allowed. The judgment and order dated 28-2-1997 passed by the Central Administrative Tribunal is set aside. The order dated 3-5-1991 passed by the Deputy Commissioner of Police by which the appellant was dismissed from service as also the order passed in appeal by the Additional Commissioner of Police are quashed and the respondents are directed to reinstate the appellant with all consequential benefits including all the arrears of pay up to date which shall be paid within three months from today. There will, however, be no order as to costs."

19. Further, the Disciplinary Authority has apparently not dealt with the additional charge against the petitioner of having remained absent during the departmental inquiry for the period as noted above despite specific stand taken by him. There is no



discussion in the impugned order in this regard. The order of the Appellate Authority miserably fails to satisfy the requirement that a quasi judicial decision having adverse consequence must be reasoned and speaking.

20. Accordingly, the impugned orders dated 24.02.2014 and 27.06.2014 are set aside. Consequent upon quashing of the impugned orders, the respondents are directed to reinstate the petitioner forthwith and grant him all consequential benefits including back wages for the period during which the petitioner remained out of service because of illegal order of dismissal passed without any evidence, within a period of three months from today.

21. In the facts and circumstances noted above, in the Court's opinion, it is a fit case where the respondents should be saddled with cost, which is assessed at Rs. 10,000/-.

22. Let the cost be paid to the petitioner within three months from the date of receipt/ production of a copy of this order.

23. This application is allowed with costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2021
Transmission Date	NA

