

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10109 of 2021

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Bharat Purbey, Son of Late Jaibeer Purbey, Retired Executive Engineer, Water Resources Department. At present resident of 3SFA-1/37, Bahadurpur Housing Colony, Bhootnath Road, Police Station- Agamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary-cum- Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Additional Secretary to the Govt., Water Resources Department, Govt. of Bihar, Patna.
3. The Additional Departmental Enquiry Commissioner, Sinchai Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate.
	:	Mr. Rajesh Kumar, Advocate.
For the Respondent/s	:	Mr. Vivek Prasad, (GP 7)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 21-12-2022

Heard Mr. Ramakant Sharma, learned Sr. counsel, duly assisted by Mr. Rajesh Kumar learned counsel for the petitioner and Mr. Vivek Prasad, learned Government Pleader No.7, for the State.

2. By filing the present writ application, the petitioner is seeking quashing of the order, contained in Notification No.1919 dated 03.09.2019, issued under the signature of respondent Additional Secretary to the Government, Water Resources Department, Government of Bihar, Patna, whereby the petitioner was awarded with a punishment of stoppage of total pension under Rule 43(b) of Bihar Pension Rules, 1950. The petitioner further



sought quashing of the order contained in Notification No. 179 dated 06.02.2020, issued under the signature of respondent Additional Secretary to the Government, Water Resources Department, Government of Bihar, Patna, whereby revision petition filed by the petitioner has been rejected and the punishment awarded was upheld.

3. Shorn of unnecessary details, the undisputed facts which are relevant for consideration of the issues are the petitioner was appointed on the post of Assistant Engineer in Water Resources Department on 31.01.1979 and after serving more than 36 years, he superannuated on 31.03.2015 from the post of Executive Engineer. During the service period, a criminal case, bearing Economic Offence Unit Case No. 36 of 2013 dated 13.08.2013 was registered for the offences under Sections 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988, with an imputation that the properties were found disproportionate to his known source of income along with the properties of his wife and, as such, the properties of the petitioner and his wife were confiscated by learned Authorized Officer, Patna.

4. The Economic Offence Unit, Bihar, Patna vide letter no.232 dated 02.09.2013 informed the Water Resources Department, Bihar, Patna of lodging of the aforesaid case and on



the basis thereof the petitioner was put under suspension vide notification as contained in memo no.138 dated 27.01.2014 in contemplation of departmental proceeding. Vide resolution contained in memo no.281 dated 07.03.2014, the departmental proceeding was initiated against the petitioner under Rule 17 of the ***Bihar Government Servants (Classification, Control & Appeal) Rules, 2005*** (hereinafter referred as 'Bihar CCA Rules, 2005').

5. Pursuant to the aforesaid letter, the Departmental Enquiry Commissioner, Bihar, was appointed as Enquiry Officer to conduct the enquiry and the copy of the said resolution was communicated to the petitioner enclosing the memo of charges and the evidence as enumerated therein.

6. The petitioner has been supplied the copy of charge-sheet submitted by the Economic Offence Unit, as evidence, besides the Government instructions issued by the General Administrative Department, Bihar and declaration of assets dated 05.02.2013 submitted by the petitioner in the department and the letters of the Economic Offence Unit, including the FIR. After having completed the enquiry, the Enquiry Officer submitted a detailed enquiry report holding all the charges proved against the petitioner. The copy of the enquiry report was served to the petitioner and second show-cause notice was asked and after



receipt of the second show-cause reply the same was discussed at the Government level and it was found that the Enquiry Officer held the petitioner guilty after due examination of written defence statement in the light of the evidence adduced by the Presenting Officer and, as such, the charges stood proved against the petitioner, for which he was awarded punishment of stoppage of 100 per cent pension permanently vide notification contained in memo no. 1919 dated 03.09.2019, as contained in Annexure 1 to the writ petition, which is impugned herein.

7. On being aggrieved by the order inflicting punishment of stoppage of 100 per cent pension, the petitioner preferred revision petition, which has been rejected vide order dated 06.02.2020 (Annexure-2 to the writ petition) and the punishment awarded was upheld.

8. Learned senior counsel appearing on behalf of the petitioner vehemently submitted that the department has issued *Prapatra* 'K' containing memo of charge, in which three charges were leveled against the petitioner but all are based on the FIR lodged by the Economic Offence Unit.

9. From bare perusal of the memo of charge, it is evident that neither there is any list of witnesses nor even the evidence, on which charges are based, has been brought on record during the



departmental proceeding. He further submits that the petitioner vide his letter dated 13.05.2015 requested for supply of the evidence, on which the case of the department is based, but save and except the charges-sheet filed by the Economic Offence Unit, no document has been provided to the petitioner. When the petitioner demanded list of witnesses, it has been informed that there is no requirement of witness in the present case, which is evident from the letter no. 307 dated 01.03.2017, as contained in the Annexure 10 to the supplementary affidavit. He further submits that the petitioner, while submitting reply to the second show-cause notice, has specifically stated that no witness has been examined in the departmental proceeding and neither the relevant documents have been given nor it has been examined by the Enquiry Officer and further the Enquiry Officer has not followed the mandatory procedure of rule 17 of Bihar CCA Rules, 2005 and the impugned order of punishment is based on the FIR/charge-sheet filed by the Economic Offence Unit.

10. The learned senior counsel further drawn the attention of this Court towards Clause 14 of Rule 17 of the Bihar CCA Rules, 2005, which clearly stipulates that “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.” He vehemently submits that there is complete disregard of the mandatory provision of the Bihar CCA Rules, 2005.

11. Learned senior counsel further relied upon the judgment rendered in the case of **Roop Singh Negi Vs. Punjab National Bank and others**, reported in **2009 (2) SCC 570** and submitted that the Hon’ble Apex court has held that a departmental proceeding is a *quasi-judicial* proceeding. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents and, as such, the FIR



and the charge-sheet filed by the Economic Offence Unit could not have been treated as evidence.

12. Further reliance has been made on a judgment rendered by the learned Co-ordinate Bench of this court in the case of **Sanjay Kumar vs. Sated of Bihar & others** reported in **2020 (2) BLJ 592** and submits that though the strict rules of evidence do not apply in domestic enquiries, but the enquiry/disciplinary authority have a duty to record their findings on the basis of evidence available before them. Tendering of documents by department cannot be said to be adequate to establish a charge in a departmental proceeding, unless the contents thereof are also proved.

13. Per contra, Mr. Vivek Prasad, learend Government Pleader No.7, for the State, submits that since all the charges against the petitioner were based on documentary evidences, such as bank passbook, insurance policies, sale deeds, income tax returns etc. produced by the Economic Offence Unit, no departmental witness was required to be examined, as such no list of witnesses was supplied to the petitioner. He further submits that since the charges framed against the petitioner was relating to having disproportionate assets to the known sources of income, a copy of charge-sheet, as has been submitted by the Economic



Offence Unit in the concerned Court, supplied to the petitioner in the evidence, beside government instruction issued by the General Administration Department and the letters of Economic Offence Unit including the FIR had also been supplied to the petitioner with the memo of charge. He also submits that the copy or the enquiry report was also served upon the petitioner along with the second show-cause notice and the reply of the petitioner was thoroughly examined at the government level and the enquiry officer having carefully examined the reply of the petitioner, found the petitioner guilty in the light of evidence adduced by the Presenting Officer. The petitioner failed to adduce any evidence in support of his defence and, as such, charges stood proved against the petitioner, for which he was awarded punishment of stoppage of 100 per cent pension permanently. While concluding his submission, he further submits that in a departmental proceeding the charges are required to be proved on the basis of preponderance of probabilities and the same is not required to be proved beyond all its reasonable doubts, as is required in a criminal trial.

14. This Court heard the learned senior counsel appearing on behalf of the petitioner and the learned Government Pleader for the State and considered the materials available on



record. It would be relevant to observe that in a disciplinary proceeding against a government servant a charge of corruption is required to be proved to the hilt, as it brings civil and criminal consequences upon the employee. The Hon'ble Supreme Court has ruled in case of **Union of India and others vs. Gyan Chand Chattar** reported in **2009 (12) SCC 78**. Admittedly, a departmental proceeding is a quasi-judicial proceeding, in which the charges leveled against the delinquent officer must be found to have been proved on the basis of taking into consideration the materials brought on the record by the parties. Purported evidence collected during investigation by the enquiry authority against the delinquent officer, itself could not be treated to be evidence in the disciplinary proceeding. It would be apt and proper to quote Paragraph 14 of the judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank (supra)**, which is as follow:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself



could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

15. The similar view has been reiterated by the Hon’ble Supreme Court in case of **State of UP vs. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**. Paragraph nos. 26 to 28 of the said judgment, are quoted here as under:

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

“7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

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.”

16. From the materials available on record and the settled legal position, one thing which is evident is that tendering of documents by department cannot be said to be adequate to establish a charge in a departmental proceeding, unless the contents thereof are also proved. Admittedly, neither the contents of the FIR nor the charge-sheet has been proved. Further, non-



examination of the complainant is a serious lacunae, which not only causes prejudice to the delinquent, but also nullifies the entire departmental proceeding.

17. From the materials available on record, it also appear that the departmental proceeding is not in conformity with the Rule 17 (14) of the Bihar CCA Rules, 2005, apart from non-observance of rules 4 and 6 thereof.

18. In view of the aforesaid settled legal position and the infirmities crept in the departmental proceeding, the impugned order as contained in Notification No.1919 dated 03.09.2019 and the order passed in revision as contained in Notification No. 179 dated 06.02.2020, are hereby set aside. Though this Court intended to remit the matter back to the department for *de novo* departmental proceedings, however, considering the fact that the petitioner has already superannuated, it would be a futile exercise, hence having been set aside the impugned orders, the petitioner must be granted all the retiral benefits in accordance with law.

19. Accordingly, the present writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	21.12.2022.
Uploading Date	06.01.2023.
Transmission Date	NA

