

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24484 of 2018

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Madhuri Devi wife of Late Panchanand Singh, resident of Village- Ujhanghi,
P.O. and P.S. Jamui, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum- Additional Commissioner-cum- Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Deputy Secretary-cum-Conducting Officer, Road Construction Department, Government of Bihar, Patna.
5. The Chief Engineer, Road Construction Department, Bhagalpur.
6. The Superintending Engineer, Road Construction Department, East Bihar Circle, Bhagalpur.
7. The Executive Engineer, Road Construction Department, Road Division, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
For the Respondent/s : Mr. Rajeev Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-12-2023

Heard Mr. Sanjeev Ranjan, learned counsel
appearing on behalf of the petitioner and Mr. Rajeev Shekhar,
learned counsel for the respondents-State authorities.

2. The original petitioner who died during the
pendency of the writ petition on 09.05.2019 had invoked the
prerogative writ jurisdiction of this Court under Article 226 of
the Constitution of India seeking quashing of office order No.
75 dated 10.04.2018 passed by the respondent no. 3 contained



in Memo No. 2695(E) dated 10.04.2018 whereby the reply to the second show cause notice dated 03.03.2014 has been rejected and upheld the earlier order of punishment. The writ petitioner also sought quashing of the Office Order No. 49 dated 12.03.2014 passed by the respondent No. 3 as contained in Memo No. 1269(E) dated 12.03.2014, whereby the pension of the petitioner has been fixed at zero on the ground that the petitioner has failed to submit his reply to the second show cause in the departmental proceeding as also the charges stand proved against the writ petitioner that he was caught red-handed by the Vigilance while taking bribe.

3. The short facts that led to the filing of the present writ petition is that the original petitioner was initially appointed as the Overseer in the year 1972 and on being found his satisfactory service and eligibility for promotion, he was posted as Junior Engineer. While he was posted as Junior Engineer, Road Division, Munger, a repairing work of the road of Sinkandara-Jamui-Kharagpur-Bariyarpur was executed by a contractor namely, Aftab Alam pursuant to Agreement No. 3F2/2006-07. On submission of the bill by the afore-noted contractor, the final bill had been sanctioned by the Executive Engineer on 08.03.2007 and after proper verification made at



the level of other higher officials, the entire payment of Rs.1,65,368/- was made to the contractor on 09.03.2007.

4. On 20.03.2007, a complaint was made by the contractor before the Vigilance in connection with a demand of gratification of Rs.5000/- by the petitioner for preparing fresh estimate. On the basis of the aforesaid complaint, a trap team was constituted and on 23.03.2007 the petitioner was caught red-handed while he was accepting a bribe of Rs.5000/- in the presence of two independent witnesses. On being apprehended by the trap team of the Vigilance Department, the petitioner was sent to judicial custody and accordingly, a criminal case bearing Vigilance Case No. 41 of 2007 has been registered. Consequent thereupon, the writ petitioner was put under suspension vide office order No. 142 read with Memo No. 1947(E) dated 12.04.2007 and the Department has accorded sanction for prosecution vide office order No. 164 read with Memo No. 2345(E) dated 07.05.2007. The petitioner was also put to departmental proceeding vide office order No. 193 read with Memo No. 2996(E) dated 28.05.2007 and the memo of charge has been served upon him under *prapatra (ka)*.

5. The charges specifically, contain that the writ petitioner had made a demand of bribe for 10% of the estimated



amount from the contractor and based on the complaint, he was caught red-handed by the trap team constituted by the Vigilance Investigation Bureau and sent him to the judicial custody. Thus, his act was unbecoming of a public servant in violation of Rule 3 of the Bihar Government Servant's Conduct Rules, 1976. Along with the memo of charge the petitioner has been served two documents including the copy of the FIR and letter of Cabinet (Vigilance) Department, Vigilance Bureau bearing No. 364 dated 29.03.2004 and finally Deputy Secretary, Road Construction Department has been made as Conducting Officer, whereas the Sectional Officer, Section No. 3, Road Construction Department as Presenting Officer vide Office Order No. 112 dated 16.04.2009.

6. In response to the afore-noted charge, the petitioner submitted his reply to the Enquiry Officer denying all the allegations and narrating the facts as to how he has been falsely implicated by the contractor. In the meantime, the petitioner came to be superannuated on 31.05.2007 and thus the departmental proceeding has been converted under Rule 43(b) of the Bihar Pension Rules, 1950. The Conducting Officer vide letter dated 14.02.2014 has submitted the enquiry report wherein the charges against the petitioner recorded to have been



proved. The disciplinary authority having considered the departmental letter No. 1018(E) dated 25.02.2014 called upon the writ petitioner to submit his second show cause by 05.03.2014. The petitioner, though submitted his second show cause through Speed Post on 04.03.2014, however, the disciplinary authority passed the final order inflicting punishment of reducing the writ petitioner's pension to zero vide office order dated 12.03.2014 (Annexure-10).

7. The writ petitioner on being aggrieved, assailed the order dated 12.03.2014, by filing CWJC No. 9854 of 2014 on the ground, *inter alia*, that the order of punishment came to be passed without considering his second show cause reply and thus the Hon'ble Court vide its order dated 03.01.2018 has been pleased to dispose of the writ petition with a direction to the disciplinary authority to take a fresh decision after considering the petitioner's second show cause and pass final order thereupon, expeditiously, preferably within two months from the date of receipt/production of a copy of this order. The aforesaid order is marked as annexure-11 to the writ petition. The order of the Hon'ble Court passed in CWJC No. 9854 of 2014 has been placed before the respondent no. 3, along with his representation dated 19.01.2018 requesting therein to



consider his second show cause and take a fresh decision in the proceeding. Thereupon, the impugned order dated 10.04.2018 (annexure-13 to the writ petition) came to be passed.

8. It is to be noted that during the pendency of the present writ petition the original writ petitioner, Panchanand Singh died on 09.05.2019 and an Interlocutory Application bearing I.A. No. 1 of 2021 had been filed for substituting the name of his widow namely, Madhuri Devi whose name has been substituted vide order of this Court dated 14.12.2022.

9. Mr. Sanjeev Ranjan, learned counsel for the petitioner while assailing the impugned order has submitted that the entire departmental proceeding is contrary to the settled principles of law and the provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005') as well as the Bihar Pension Rules, 1950.

10. Referring to the memo of charge as contained in Annexure-P/4 to the writ petition, he submits that the memo does not contain the list of witnesses, by whom articles of charge is proposed to be sustained. All the more, in the departmental proceeding no witness was examined and the Enquiry Officer merely produced the First Information Report



and relied upon the same to prove the charge which is submitted to be legally impermissible and invalid as the contents of the FIR cannot be said to have been proved in absence of examination of oral evidence to prove its contents. He thus submits that the disciplinary authority erred in holding that the charges against the petitioner stood proven. He further submits that the FIR which is not a substantive piece of evidence without actual proof of fact stated therein by examination of witnesses to support the contents. Reliance has been made on a judgment of the Hon'ble Supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank*** reported in ***(2009) 2 SCC 570***.

11. He next submitted that although the Presenting Officer was appointed in the departmental enquiry but on the date of holding of enquiry i.e., 14.02.2014, the entire enquiry was concluded on a single day, the presenting officer was absent as he was on leave and thus the enquiry officer performed the dual role of a judge and the prosecutor by producing the enquiry report and tendering the same in enquiry which is impermissible and thus vitiates the entire enquiry as the same has been held in breach of principles of natural justice and suffers from bias as the capacity of an independent



adjudicator was lost as he has become the representative of the Department.

12. It is further submitted that the husband of the petitioner at the time of his retirement on 31.05.2007 was working on the substantive post of Junior Engineer which is a gazetted Class II post and the appointing authority of the cadre of Junior Engineer is the State Government. Thus, the impugned order of punishment passed by the Engineer-in-Chief is wholly without jurisdiction and nullity as the same has been passed by an authority other than the Appointing Authority.

13. Mr. Sanjeev Ranjan, learned counsel for the petitioner in order to buttress his submission further submitted that the defect of jurisdiction strikes at the very authority of the person to pass such order and such defect cannot be cured either by the conferment of jurisdiction by the court or by consent or acquiescence as there is no estoppel against the Statute. He submits that the question of jurisdiction can be raised at any stage of proceeding even at a collateral stage. Reference has been made to the judgments of the Hon'ble Supreme Court reported in *(1995) 5 SCC 159 [Karnal Improvement Trust v. Prakash Wanti]*, *AIR 2007 SC 2499 [S. Sethuraman v. R. Venkataraman]* and *AIR 2012 SC 1239 [Collector, District*



Gwalior and Anr. v. Cine Exhibitors Private Limited & Anr.]

Further submission has been made on behalf of the petitioner that the earlier order dated 03.01.2018 passed in CWJC No. 9854 of 2014 was an open remand by allowing the writ petition in terms of the prayer mentioned therein but the impugned order passed by the Engineer-in-Chief restoring the previous order which was virtually lost in the earlier round of litigation is *per se* illegal and invalid as the present impugned order cannot restore a non-existent order.

14. He lastly submits that withholding of 100% of pension is shocking to the conscience, as the pension being the only source of livelihood for the widow to take care of her in her old ailing life and to look after her family who is dependent upon her. All the more, the Department has failed to prove the gravity of the charges in the departmental proceeding against the deceased husband of the petitioner.

15. A counter affidavit, as well as supplementary counter affidavit(s) have been filed and referring to the averments made therein, Mr. Rajeev Shekhar, learned counsel for the State submitted with all his vehemence that the original petitioner was apprehended by the trap team constituted by the Vigilance Investigation Bureau, on a complaint made by the



contractor from whom a demand was made, while accepting a bribe of Rs.5000/- in presence of two independent witnesses, which resulted into institution of a criminal case bearing Vigilance Case No. 41 of 2007. The Department has also accorded sanction for prosecution and he was put to departmental proceeding. The original petitioner had been allowed the proper opportunity of hearing and he submitted his explanation which was duly considered by the Enquiry Officer and after considering the materials available on record, the charges stand proved against him. Further, the second show cause of the petitioner was also considered in compliance of the order dated 03.01.2018 passed in CWJC No. 9854 of 2014, before passing the impugned order of punishment by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar (respondent no. 3) under Rule 43(b) of the Bihar Pension Rules.

16. He further submits that since the original petitioner had earlier assailed the original punishment order dated 12.03.2014 in CWJC No. 9854 of 2014 which was allowed and remanded at the stage of second show cause for taking a fresh decision after considering the second show cause.



Thus, the petitioner cannot be allowed to raise the initial shortcomings or illegality said to have occurred in the departmental proceeding. He also submits that since the impugned order has been passed pursuant to the direction of this Court in the earlier round of litigation in CWJC No. 9854 of 2014, the petitioner is precluded from raising the point of jurisdiction.

17. This Court has carefully heard the submissions advanced on behalf of the learned counsel for the respective parties and also perused the materials available on record. Before commenting on the merits of this case, it would be worth mentioning here that after the death of the erstwhile employee (original petitioner), the criminal proceeding arising out of Vigilance Case No. 41 of 2007 stands abated, and thus this Court shall examine the entire gamut of the matter on the premise that the allegations/charges stand against the original petitioner in the criminal case could not be finally proved because of his death, who was accused therein.

18. Now coming to the merit of this case, admittedly, the memo of charge does not contain the list of witnesses by whom the article of charges proposed to be sustained. Sub rules (3) (4) and (6) of Rule 17 of the Rules



2005 reads as follows:

“(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

x x x x x

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the



statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant:

(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting officer". "

19. From the plain reading of the afore-noted provisions it goes without saying that where the Department is proposed to hold an enquiry against a government servant under this Rule and proposed to sustain the articles of charge there must be witness(s) by whom the charges are proposed to be proved. It is well settled that the purported evidence collected during the investigation by the Investigating Officer against the accused by itself could not be treated to be evidence in the disciplinary proceeding in absence of any examination of witness to prove the said documents. In the case in hand, the memo of charge though contains letter of Cabinet Vigilance Department (Investigation Bureau) and a copy of the FIR but did not prove the contents thereof by examination of author of document or the witnesses in support of the imputation.

20. Learned counsel for the petitioner has rightly relied upon the judgment rendered by the Supreme Court in the



case of **Roop Singh Negi** (supra) wherein it has been held in paragraph nos. 14 and 15, which reads as under:

“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. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have



been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

21. It is further to be noted that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. A Constitution Bench of the Hon’ble Apex Court while elaborately considering the aim and object of rules of natural justice in the case of ***A. K. Karaipak and Ors. vs. Union of India and Ors, AIR 1970 SC 150***, has been pleased to hold as follows:

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good



faith, without bias and not arbitrarily or unreasonably...."

22. Needless to observe the Enquiry 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 delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. This Court also cannot lose sight of the fact that the entire enquiry was conducted in one day on 14.02.2014, in the absence of the Presenting Officer.

23. In the *State of Uttar Pradesh and others vs. Saroj Kumar Sinha, 2010 (2) SCC 772*, the Hon'ble Supreme Court in paragraph nos. 28 and 30 has held as follows:

"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 un rebutted 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.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

24. Now coming to the point of impugned order being wholly without jurisdiction, having been passed by an authority who is neither the appointing authority of the original petitioner nor the competent under the law as envisaged under Section 43(b) of the Bihar Pension Rules. It would be worth noting here that the right of withholding or withdrawing of pension or any part of it, whether permanently or a specified period vests only in the State Government on the contingencies of fact that any pecuniary loss causes to the government if the officer is found in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service including service rendered on re-employment after



retirement.

25. From the reading of the charges it transpires that there is no charge in relation to pecuniary loss caused to the Government either found proved in departmental or judicial proceeding or by misconduct or negligence. This Court also finds substance in the submission made on behalf of the petitioner that the respondent no. 3 who has passed the impugned order is neither the appointing authority of the deceased husband of the petitioner nor any authority to which the appointing authority is subordinate or by any other authority empowered on this behalf by a general and special order of the Government. This Court has no hesitation to accept the submission of the petitioner that any order passed by an authority having no jurisdiction is a nullity, which strikes at the very authority of the person to pass such order and such defect cannot be cured either by conferment of jurisdiction by the court or by consent or acquiescence as there is no estoppel against the Statute.

26. Learned counsel for the petitioner has rightly relied upon the judgment of the Hon'ble Supreme Court in the case of *S. Sethuraman Vs. R. Venkataraman* reported in *AIR 2007 SC 2499*, it would be worth benefited to quote as follows:



“22. Such a decision keeping in view the scope and ambit of the power of judicial review vested in the High Court under Article 226 of the Constitution of India could have been interfered with on the ground that the order impugned before it contained errors apparent on the face of the record. Whereas the learned Single Judge of the High Court in passing its order took the said principle into consideration, the Division Bench in our opinion failed to do so. Not only despite its attention having been drawn to a number of grounds leading to passing of the order impugned before it became vitiated, the High Court applied the principle of estoppel against the appellant and opined that having submitted himself to the jurisdiction of the appellate authority, he could not be permitted to question the legality of the same. The approach of the High Court in our opinion was wholly erroneous. Principle of estoppel has no application in a case of this nature. The appellant did not and in fact could not confer upon an authority a jurisdiction which he did not derive under the statute. If jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner. The jurisdiction of the appellate authority pursuant to the order of the Division Bench, which it will bear repetition to state, was passed on consent of the parties is not in dispute but only because the appellant consented to re-examination of the



matter by the appellate authority, which it was otherwise entitled to, the same by itself could not have been found to be a ground for his becoming ineligible to challenge the final order passed by the appellate authority when a large number of jurisdictional errors were committed by it and were otherwise apparent on the face of the record. The Division Bench of the High Court in our opinion, therefore, was not correct in taking the aforementioned view.”

27. The submission made on behalf of the State to the effect whereby it is submitted that since the Hon’ble Court has relegated the matter to the disciplinary authority to consider the second show cause and pass a fresh order and thus the petitioner is precluded from challenging the legality of the departmental proceeding prior to the stage of the second show cause is wholly misconceived and fit to be rejected. In the earlier round of litigation, the learned Bench of this Court has not made any adjudication on the legality of the procedural defect of the disciplinary proceeding and there was only an open remand to the disciplinary authority to consider the second show cause of the original petitioner in order to come to a rightful conclusion and thus the plea of estoppel by waiver or acquiescence or *res judicata* is not available to the State respondents nor in any view of the matter, it precludes the



petitioner to raise the issue of jurisdiction.

28. In view of the discussions made hereinabove and the settled position of law, this Court has no hesitation in setting aside the impugned order as contained in office order No. 75 dated 10.04.2018 in Memo No. 2695(E) dated 10.04.2018 as also office order No. 49 read with Memo No. 1269(E) dated 12.03.2014 passed by the respondent no. 3 and directed the respondents authorities to treat the original petitioner in service till the date of his retirement and thereafter calculate and accord all the pension/family pension in accordance with law to the petitioner, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

29. Accordingly, the writ petition stands allowed.

30. There shall be no order as to costs.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.12.2023
Transmission Date	N.A.

