

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.756 of 2019

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Ramashish Paswan, S/o Late Bitan Paswan, R/o Prema Sadan, New Mahavir Colony Beur, Near Betaura More Nala, P.O. and P.S.- Beur, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar, through Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Bihar at Patna.
3. The Under Secretary, Rural Works Department, Government of Bihar, Bihar at Patna.
4. The Additional Secretary, Rural Works Department, Government of Bihar, Bihar at Patna.
5. Chief Engineer-3, Rural Works Department-cum-Conducting Officer, Government of Bihar at Patna.
6. The Assistant Engineer, Rural Works Department, -cum-Presenting Officer, Government of Bihar at Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Ravi Prakash, Advocate
For the Respondent/s	:	Mr. K.P. Gupta, G.P. 10 Mr. Virendra Kumar, AC to GP -10

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT

Date : 25-09-2023

Interlocutory Application no. 01/2023

The aforesaid interlocutory application has been preferred on behalf of the above- named petitioner for amending the prayer portion of the present writ application and for bringing the additional facts on record which are necessary for the proper adjudication of the present application by this Hon'ble Court.



2. The petitioner wants to be the part of the writ application:

(vi) to issue the appropriate writ (s)/ direction (s) in the nature of Certiorari quashing and setting aside the order dated 17.01.2019 passed vide notification bearing no. 89 dated 17.01.2019 (as contained in Annexure-P/12 whereby the review application was rejected without appreciating the facts and the earlier order dated 24.10.2018 was upheld.

3. There is no opposition from the respondents.

4. For the reasons assigned in **I.A. No. 01/2023**, the same is allowed. The paragraph-2 of the Interlocutory Application be considered as part of the writ petition.

C.W.J.C. No. 756 of 2019

Heard Mr. Rama Kant Sharma, learned Senior counsel for the petitioner and Assistant Counsel to the Government Pleader no. 5.

2. This writ application has been preferred for the following reliefs:

(I) for issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of mandamus or any other appropriate writ to the concerned respondent authorities for



*setting aside the order/ notification no. 3/Aa.
Pra.- 1-147/2013 2561 dated 24.10.2018;*

II. for issuance of an appropriate writ(s)/ order(s)/ direction(s) for reinstating the petitioner to the post of Executive Engineer, Rural Works Department;

III. for issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of mandamus or any other appropriate writ to the concerned respondent authorities for setting aside the order passed after conduct of departmental proceeding wherein petitioner has been found partly guilty;

IV. for payment of costs and compensation to the petitioner.

3. The case of the writ petitioner in short is/are as follows:-

4. The petitioner at the relevant time was posted as an Executive Engineer, Rural Works Department, Jehanabad (henceforth for short 'the Department') where a departmental proceeding was initiated against him. The allegation against him was that on receipt of three tenders, without going into the details of the other two tenders; he allotted the work to M/s Om Sai Construction.

5. This was brought to the notice of the Special Work



Officer of 'the Department' by the Chief Engineer 4 vide his office letter no. 1755 dated 19.08.2014 (Annexure-P/1). Accordingly, vide letter no. 3835 dated 20.10.2014 and letter no. 919 dated 26.03.2015, he was put on show cause by the Special Works Officers of 'the Department'.

6. The petitioner submitted his show cause on 09.04.2015 detailing out the reasons for allotting the work to M/s Om Sai Construction with request to exonerate him from the charges.

7. This followed the charges against the petitioner and learned Senior Counsel took this Court to the document/'Propatra Ka' issued by the department on 03.09.2015 (Annexure-P/3) to show that the letter no. 1755 dated 19.08.2014 issued by the Chief Engineer was the only document annexed with the charge.

8. This followed the resolution no. 2227 dated 11.07.2016 by which the Inquiry Officer as also the Presenting Officer were appointed by the Additional Secretary of 'the Department' (Annexure-P/4 to the petition).

9. The Inquiry Officer conducted enquiry and thereafter, it came to the conclusion that though the tender of Maa Sharda Construction was rejected, the reason was not



assigned. Further, it was recorded that the C/S was prepared by the two sub-ordinate Officials including the Divisional Accounts Officer, who recommended the name of only M/s Om Sai Construction.

10. In that background, the Inquiry Officer held that the Executive Engineer cannot be singled out for the said wrong doing. However, since the last decision was taken by him, he can be held partially guilty of the charges. This report was submitted by the Inquiry Officer vide memo no. 2051 dated 11.04.2017 (Annexure-P/8).

11. The petitioner was thereafter put on second show cause by 'the Department's' letter no. 953 dated 22.05.2017 who replied vide letter no. 6.7.2017 detailing out the facts and denying the charges with a request to sympathetically consider his case and exonerate him of the charges (Annexure-P/9).

12. This followed the order in question vide notification no. 2562 dated 24.10.2018 by which taking into account the fact that due to his decision, the government suffered financial loss of Rs. 4,56,456/- ; rejecting his second show cause, he was demoted from the post of Executive Engineer to that of Assistant Engineer one day before he was granted such promotion (Annexure-P/10).



13. Aggrieved, the writ petition.

14. During the pendency of the writ petition, the review application preferred by the petitioner on 31.10.2018 came to be rejected vide memo no. 89 dated 17.01.2019 and has been brought on record by way of Interlocutory Application No. 1 of 2023 by the petitioner (Annexure-P/12).

15. Heard the parties.

16. It is the case of the petitioner that the two subordinate officials presented the tenders along with their recommendation that out of three firms, two are ineligible due to the non submission of the documents and in that background, work can be allotted to M/s Om Sai Construction. He accordingly, put in his signature allotting the work to the said firm.

17. Further, a bare perusal of the facts as also the proceeding would show that the only document that was made part of the charge is the letter no. 1755 dated 19.08.2014 issued by the Chief Engineer -4 of 'the Department'.

18. It is his further submission that though the Inquiry Officer and Presenting Officer were appointed, it is not the case of the State that in line with the 'CCA Rules 2005', the witnesses were examined/cross-examined. In nutshell, the



procedure envisaged in the rules was/were not followed. He submits that even the Enquiry Officer found the charges to be partially proved but without assigning any reason and/or differing with it, the order in question.

19. It is his further submission that the review application preferred was rejected in a routine manner as it appears from the order attached with the Interlocutory Application. He submits that his case is covered by the order of Hon'ble Apex Court in the case **Roop Singh Negi vs. Punjab National Bank & Ors.** reported in **(2009) 2 SCC 570**. He thus concludes by submitting that in that backdrop, the order needs interference.

20. Learned counsel for the State, on the other hand, submits that from the documents on record, it is clear that ignoring the claim of the other two firms, the petitioner allotted tender to M/s Om Sai Construction. Though the subordinate officials did recommend the name of M/s Om Sai Construction, as an Executive Engineer, before putting in his signature, he should have ascertained the facts which he failed to do and in that background, the order has rightly been passed by the respondents.

21. It is his further submission that the petitioner



chose not to cooperate in the proceedings as would appear from the record that on several dates, he absented himself.

22. Learned Senior counsel to this reply of State Counsel submits that even if he did not appear, the respondent has the duty under the 'the CCA Rules' 2005 to conduct the entire proceedings by following the procedure before coming to the conclusion and its absence, the same suffers from illegality. He further submits that one third of the amount of Rs. 456,454/- (i.e. Rs. 152,151/-) was demanded and deposited by the petitioner through Bank draft on 18.10.2019 which is part of I.A. No. 01/2023.

23. Having gone through the facts of the case, the materials on the record as also the submissions put forward by the parties, it appears that the petitioner as an Executive Engineer being the Final Authority was not diligent enough to check the recommendation made by the subordinates before putting in his signature. Having failed to do so, the respondents were well withing their rights to initiate Departmental proceedings against him.

24. However, once the Departmental proceeding was initiated, the respondents being the State, it is/was their bounden duty to follow the procedure before coming to the conclusion.



Further, the Bihar Government Servant (Classification, Control and Appeal) Rules 2005 (henceforth for short 'the 2005 Rules') deals with the procedure for imposing penalty including the major penalties in Part-VI and it read as follows:

PART-VI

Procedure for Imposing Penalties

17. Procedure for Imposing major penalties (1) *No order imposing any of the penalties specified in '[clauses (vi) to (xi)] of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.*

(2) *Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.*

2[*Provided that where the Department Enquiry Commissioner is appointed as inquiring authority in such cases the Departmental Enquiry Commissioner either himself conduct the inquiry or may transfer the case of enquiry to the Additional Departmental Enquiry Commissioner. In the matter of such transferred cases of enquiry the Additional Departmental Enquiry Commissioner may forward the records of enquiry alongwith Enquiry report*



directly to the Disciplinary Authority.]

Explanation. *Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.*

(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.

(5) (a) On receipt of the written statement , the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if It thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an Inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer to present on his behalf the case in support of the articles of charge.

(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".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) (a) The Government Servant may take the assistance of other Government Servant posted in any office, either at his headquarter or at the place where the Enquiry is to be held, to present the case on his behalf:



Provided that he may not engage a legal practitioner for the purpose, the Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided also that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:

Provided further that the Government Servant shall not take the as any such other Government Servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.

(9) If the Government Servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say anything for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall



record the plea sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note: *If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.*

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the



possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by welling, refuse to requisition such of the documents as are, in its opinion, relevant to the case

(13) On receipt of the requisition specified in sub-rule (12) of this Rule, authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the



information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) 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.

(15) if it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring



authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice:

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority:



(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Governments Servant, or permit them to file written briefs of their respective case; if they so desire.

(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this Rule, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (1) to (v) of Rule 14 [but not competent to impose any of the penalties specified in '[clause (vi) to (xi) of Rule 14), has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his own findings or having regard to its decision on any of



the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clause (vi) to (xi) of Rule 14 should be imposed on the government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the penalties mentioned in '[clause (vi) to (xi) of Rule 14.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if he is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government Servant such penalties as it may deem fit in accordance with these Rules

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction the inquiring authority so succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice,



it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

23(i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government Servant in respect of each article of charge.

(c) an assessment of the evidence in respect of each article of charge,

(d) the findings on each article of charge and the reasons thereof.

Explanation- *If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge:*

Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(i) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include

(a) the report prepared by it under clause



(1) of this sub rule;

(b) the written statement of defence, if any, submitted by the Government Servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

(underline mine)

25. Thus, Part -VI of ‘the 2005 Rules’ relating to procedure for imposing penalties is/are very clear. Even in absence/non cooperation of the Government servant, the entire procedure including adducing of the evidence and examination of the witnesses is/are essential.

26. In the this case, the only document that formed the basis for the initiation of the departmental proceeding was the letter no. 1755 dated 19.08.2014 issued by the Chief Engineer – 4, Rural Works Department, Bihar, Patna.

27. As such, it was essential for the respondents to examine the Chief Engineer – 4, the author of the letter no. 1755 dated 19.08.2014, record the same as also inform the petitioner



about it in advance (in writing) so that he may cross-examine the official, if he intended to do so.

28. Here no such procedure was followed which is evident from the record itself and only treating the said document/the letter no. 1755 dated 13.08.2014 issued by the Chief Engineer-4 of 'the Department' to be the evidence; the order in question.

29. The Hon'ble Apex Court in **Roop Singh Negi vs. Punjab National Bank and Others** reported in (2009) 2 SCC 570 held in paragraph-14 as follows :

“Indisputably, a departmental proceeding is a quasi-judicial proceedings. The enquiry officer performs a quasi judicial function. The charges levelled against the delinquent office 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 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.”



30. Accordingly, the Hon'ble Supreme Court allowed the appeal and set aside the judgement of the High Court.

31. In this case, as stated above, the Chief Engineer 4 who wrote the letter that formed the basis for the initiation of Departmental proceeding was never summoned and/or examined.

32. In absence of that, the Departmental proceedings and subsequent order in question suffers from infirmity. The review application too came to be rejected in a routine manner.

33. In cases after cases relating to the Departmental Proceedings, it can be seen that the authorities in a zeal to conclude the proceedings, inadvertently or deliberately choose not to follow the rules/procedures which in turn proves to be beneficial to the Public Servant facing the proceedings.

34. Taking into account the said facts, learned Single Judge (Hon'ble the Justice P.B. Bajanthri) in a case of **Dr. Arun Kumar Tiwary vs. The State of Bihar & Ors. (C.W.J.C. No. 21026 of 2018)** on **17.05.2022** gave direction to the State Government which find incorporated in paras 19 and 20 as follows:-

“19. The State Government is requested to arrange refresher course periodically to all the disciplinary, inquiry and appellate authorities in



respect of exercising quasi judicial functions under disciplinary rules like Bihar Government Servants (CCA) Rules, 2005. For the reasons that in every disciplinary matter authority has ignored and procedure laid down in the disciplinary rules.

20. Copy of this order be forwarded to the Chief Secretary, State of Bihar for taking necessary steps in the matter.”

35. Whether the State Government took the same into consideration or not, only the future orders will tell.

36. So far as the case in hand is concerned, taking into account the aforesaid facts, in the considered opinion of the Court, the order/notification no. 3/Aa/Pra-1-147/2013 -2562 dated 24.10.2018 (Annexure-P/10) as also the notification no. 89 dated 17.01.2019 (Annexure- P/12) issued by ‘the Department’ need interference. The same are accordingly set aside.

37. The writ petition stands disposed of.

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	21.09.2023
Uploading Date	27.09.2023
Transmission Date	

