

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17198 of 2014

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Dhirendra Prasad Shrivastava Son of Late Baidyanath Prasad, Resident of
House No. 84A, Patliputra, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Secretary, Road Construction Department, Government of Bihar, Visweshraiya Bhawan, Patna.
4. The Deputy Secretary (Vigilance), Road Construction Department, Government of Bihar, Visweshraiya Bhawan, Patna
5. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Visweshraiya Bhawan, Patna
6. Secretary, Bihar Public Service Commission, Patna.

... .. Respondents

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Appearance:

For the Petitioner	:	Mrs. Soni Shrivastava, Advocate
		Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Ravish Chandra, AC to SC-6
For the BPSC	:	Mr. Zaki Haider, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 17-10-2023

1. The present writ petition has been filed for quashing the order dated 15.07.2013, passed by the Deputy Secretary (Vigilance) to the Government, Road Construction Department, Bihar, Patna, whereby and whereunder the petitioner has been inflicted with the punishment of deduction of 25% pension and 25% gratuity permanently, as also it has been directed that the



petitioner shall not be paid anything else, apart from the subsistence allowance already paid to him, during the period of suspension.

Facts of the Case:-

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as the Engineer Assistant in the Road Construction Department in the year 1971, however, the said post was merged with the post of Assistant Engineer in the year 1975. The petitioner was promoted to the post of Executive Engineer on 06.7.1999 and he was posted at the Road Division, Bihar Sharif from 06.07.1999 to 30.06.2001, whereafter, he was transferred to the Ganga Bridge Project and finally, he superannuated from service on 31.07.2007. The petitioner is stated to have been suspended on 19.5.2006, whereafter, a memo of charge dt. 1.8.2006 was issued, wherein eight charges were levelled against the petitioner, however, five of them are relevant, hence only five charges are being recited in brief, herein below:-

Charge No. 01- In the Bihar Sharif-



Ekangarsarai-Telhara project, the sanctioned amount of bitumen in the BOQ (Bill of Quantity) was 1492.21 Metric Ton (MT), against which petitioner issued 1624.28 MT of bitumen to the contractor. Thus the local officers, without estimating the amount of bitumen to be consumed in the works/project, issued excess bitumen to the contractor causing financial gain to him. Petitioner also appears to be guilty of not following Clause 15 of Letter No. 2347 dated 31.12.1983, issued by the Technical Examination Cell of the Cabinet Vigilance Department, according to which it is the responsibility of the concerned JE/AE/EE to supervise whether materials given to the contractor are being misused or not and that excess material is not lying with the contractor, after use/ consumption.

Charge No. 02- *For the Biharsharif-Ekangarsarai-Telhara Road work, 707.726 MT bitumen was used out of total quantity of 1624.28 MT, issued to the contractor. For recovery of the balance quantity of 916.554 MT, the petitioner is stated to have recommended that the same be recovered from the contractor @ Rs. 5838/- Per MT, but as per the measurement, qua the last bill, i.e. 13th bill, the total amount*



of bitumen consumed appears to be 572.22 MT. Thus, cost of 1624.28 — 572.22= 1052.06 MT should have been recovered at the penal rate of 5838x2= Rs. 11,676 per MT, i.e totaling to a sum of Rs. 1,22,83,853/- but only a sum of Rs. 13,59,915/- was recovered. Thus, the petitioner appears to be guilty of not recovering a sum of Rs. 1,09,23,938/- from the contractor. He also appears to be guilty of violation of Clause 18 of Letter No. 2347 dated 31.12.1983, issued by the Technical Examination Cell of the Cabinet Vigilance Department, according to which, before making payment of bill to the contractor, there is provision for grant of the following certificate regarding measurement approval and verification- "For the work done till this bill, the price/ value of the materials given to the contractor has been deducted from his bill and till now, whatever material has been used in the work, the value thereof has been adjusted against the allotment made for the work".

Charge No. 03- *In the spot-inspection, conducted by the enquiry officer of the Technical Examination Cell of the Cabinet Vigilance Department on 20.11.2002 and*



21.11.2002, it was found that the road (Bihar sharif-Ekangarsarai-Telhara) was in a bad shape and the work had not been done as per the prescribed standards, hence the entire amount spent on the road has been wasted. In this manner, the Junior Engineer/ Assistant Engineer and Executive Engineer appear to be guilty for misutilization of the entire payment made.

Charge No. 04- *The Chief Engineer, South Bihar (ya.) Upbhadg, Patna, in his inspection report pertaining to the inspection conducted on 12.05.2000 & the Superintendent Engineer, Central Road Circle, Road Construction Depart., in his inspection report pertaining to the inspection conducted on 16.03.2001, have though mentioned that the work is not being done as per the prescribed standards and in a proper manner, but still the Executive Engineer failed to follow the same and ensure that the advice is followed, hence the petitioner appears to be guilty.*

Charge No. 05- *The work of Biharsharif-Ekangarsarai - Telhara road was neither completed within the stipulated time i.e. by 30.04.1999, as per the Agreement No 37 F2/99-2000 nor within the extended time i.e. by 30.6.2001, by the contractor,*



but still the Executive Engineer failed to take any action against the contractor, hence he appears to be apparently guilty.

3. The petitioner had filed his reply to the aforesaid memo of charge dated 01.08.2006 on 04.09.2006, however, thereafter, vide memo dt. 15.12.2006, first supplementary charge-sheet was issued qua the petitioner with regard to another contract, wherein three charges were levelled, which are being stated in brief, herein below:-

Charge No. 01- *When the petitioner was posted at Road Division, Biharsharif, he had entered into an agreement with Sri Harivanshi Lal vide Agreement No 47 F 00-01 for a sum of Rs. 9,17,759/-, with regard to renovation work of KM 17 to 19 of Biharshariff Barbiga Road. As per the agreement, the date of starting the work was 28.02.2001 and completion date was 27.05.2001. Under the Road Division, Biharsharif, KM 1 to 23 of Biharshariff Barbiga Road was transformed into NH 82, due to which it was handed over to the NH Wing. Thus, directions were issued to the concerned Junior Engineer and the Assistant Engineer, by petitioner's letter*



no.445 dated 26.03.2001, to immediately stop the work being carried out on this road, on account of the said road being transformed into National Highway. Then first current bill, vide Divisional Pramanak no.79 dated 31.03.2001, for a sum of Rs. 2,66,857/-, was paid to the contractor, but the petitioner failed to recover the excess quantity of bitumen, issued to the contractor, for which the petitioner is guilty.

Charge No. 02- If the petitioner would have passed the first current bill as Final bill and would have recovered whole value/price of bitumen issued in excess to the contractor, then there would have been no occasion for the Junior Engineer to prepare the second final bill. Thus, taking benefit of this, the Junior Engineer made entries in the second final bill and showed a sum of Rs.1,83,448 as the due amount, towards the contractor, which became a basis for enabling the contractor to go to the court of law. The petitioner is alleged to have not verified the said bill on the spot, which is in violation of the technical integral provisions, for which the petitioner is guilty.

Charge No. 03- For the work mentioned in Charge no 01, second final bill was entered by the Junior Engineer in Measurement



Book no 2047 'B', wherein a sum of Rs. 1,83,448/- was shown to be payable to the contractor and 20 MT bitumen was shown to have been issued to the contractor. The Assistant Engineer, while rejecting the measurement entries made by the Junior Engineer, mentioned that price of 5 MT of bitumen remains due with the contractor. The contractor Sri Harvanshi Lal filed a case before the Hon'ble High Court in the year 2004 against the so-called dues. Hence, the petitioner is guilty of keeping the final bill pending in his office.

The petitioner had then filed reply to the said supplementary charge-sheet on 29.12.2006.

4. In the meantime, the first enquiry report was submitted, vide enquiry report dated 15.05.2007, wherein though charge no.1 was partially proved, however, charge nos. 2 to 8 were not found to have been proved by the enquiry officer. In fact, second enquiry report dated 26.07.2007 was also submitted thereafter, wherein the enquiry officer had found the charge nos.1 and 2 to have not been proved, however, the charge no.3 had been found to have been proved.



5. The disciplinary authority had then issued the third charge-sheet/second supplementary charge-sheet dt. 13.2.2007, wherein 3 charges were levelled, which are being briefly stated herein below:-

Charge No. 01- An agreement was executed with Sri Vishwanath Prasad for a sum of Rs. 19,43,255 for construction of a R.C.C. bridge of 2X6X3 meter, in place of 3X12 feet X10 feet arch-bridge No. 40/1, situated at KM 40 of the Biharsharif-Daniyawara road under the Road Division, Biharsharif. The date of starting the work was fixed as 05.03.1999, while the date of completion of work was fixed as 15.06.1999, whereafter the petitioner, vide letter no.377 dated 12.03.2001 had submitted claim of Rs. 2,91,444/- before the Superintending Engineer, Centre Road, Patna Circle, on which the Assistant Engineer had also put his signature on 29.06.2000, whereupon the petitioner had made his recommendation on 12.03.2001. The work was completed on 15.06.1999 but the petitioner submitted the claim before the Superintending Engineer vide letter No. 377 dt. 12.3.2001. In this manner the petitioner is guilty of submitting claim, after a long period, before the Superintendent



Engineer, for approval of the same.

Charge No. 02- The petitioner did not verify the claim bill to the extent of the prescribed percentage, as per the order contained in Paragraph Part-2, clause (Ga) (10) of letter no. 462 dt. 30.03.82, issued by the Cabinet Vigilance Department, for which the petitioner is guilty.

Charge No 03- As per Clause 8.1.2 of the Resolution no. 948 dt. 16.07.2006 of the Cabinet Vigilance Department, no sort of increase is permissible in the number of items of the work in question, according to the repair & maintenance stipulations/ conditions, but still the petitioner made recommendation for approval of increase in the number of items of the work in question, for which he is guilty.

6. The petitioner had then filed reply to the third charge-sheet/second supplementary charge-sheet. The enquiry officer had also submitted third enquiry report dated 26.07.2007, wherein all the three charges had stood proved. The petitioner had then superannuated on 31.7.2007, whereafter the pending disciplinary proceedings were converted to one under Rule 43(b) of the Bihar Pension Rules,



1950 (hereinafter referred to as the 'Rules, 1950'), vide order dated 17.09.2007, and then a second show cause notice dt. 21.09.2007 was issued to the petitioner, wherein the disciplinary authority had differed with the opinion of the enquiry officer to the extent he had not found the charges to have been proved qua the petitioner, to which the petitioner had filed his reply on 28.09.2007, putting forth his defence and stating therein that neither any instance of gross misconduct has been found to have been proved qua him nor it has been proved that he had caused any pecuniary loss to the Government.

7. It appears that the matter was then referred to the Bihar Public Service Commission, wherein the punishment of deduction of 50% pension and 50% gratuity was proposed, however, the Bihar Public Service Commission, in its meeting held on 29.07.2008, decided that since it is not clear as to how much pecuniary loss has been caused to the department on account of the complicity of the petitioner, it would be appropriate to inflict



punishment to the extent of deduction of 25% pension and 25% gratuity as also the petitioner shall not be entitled to payment of any sum, except the amount of subsistence allowance already paid to him for the period of suspension. Accordingly, the disciplinary authority had passed an order dated 05.01.2009, inflicting the punishment of deduction of pension and gratuity to the extent of 50% each and it was also directed that the petitioner shall not be entitled to anything except the subsistence allowance, for the period of suspension. The said order dated 05.01.2009 was challenged by the petitioner by filing a writ petition bearing CWJC No.13537 of 2009, however, a co-ordinate Bench of this Court, vide order dated 26.08.2011, had granted liberty to the petitioner to file revision petition, whereafter the petitioner had filed a revision petition, and then the impugned order dated 15.07.2013 was passed, inflicting the punishment of reduction of pension and gratuity of the petitioner by 25% each, on a permanent basis and it was further directed that the petitioner shall



not be entitled to anything else, except the subsistence allowance, for the period of suspension. This is how the petitioner is before this Court.

Contentions of the Ld. Counsel for the Petitioner:-

8. The learned counsel for the petitioner has submitted that as far as the first charge-sheet is concerned, the enquiry officer had only found charge no.1 to have been partially proved, however, charge nos. 2 to 8 have not been found to have been proved. It is submitted that charge no.1 of the first charge-sheet pertains to issuance of extra bitumen to the contractor in connection with Biharsharif - Ekangarsarai - Telhara Road Project, however, it is stated by the learned counsel for the petitioner, by referring to the second show-cause notice dated 21.09.2007 (relevant portion whereof can be found at page no.71 of the writ petition) that it has been admitted by the respondents that the price equivalent to the amount of bitumen issued in excess to the



contractor has been recovered by the successor officer of the petitioner, by way of adjustment in the final bill. As far as charge no.2 is concerned, the same is more or less similar to charge no.1. As regards, charge no.3 regarding the road in question being found in bad shape, upon inspection being made, it has been submitted that the work in question started in the year 1998 and got completed on 30.06.2003, whereas the petitioner was posted at the relevant place in between 06.07.1999 to 30.06.2001, whereas the date of inspection is 20.11.2002 and 21.11.2002, which is much after the petitioner had stood transferred, hence on the very face of it, charge no.3 is not sustainable. As regards charge no.4 i.e. regarding the condition of road being found to be poor, during the course of inspection, held on 16.03.2001, it is submitted that during the said period, as aforesaid, the work was in progress, hence the assessment could have been made only after completion of the entire work in question. As regards charge no.5, it is submitted that the



allegation regarding the work having not been completed within the extended time i.e by 30.06.2001 is also not sustainable, inasmuch as subsequently, the time period for completing the work had been extended upto 30.06.2003, thus, the charge no.5 is also not made out qua the petitioner. As far as charge nos. 6 to 8 are concerned, the respondents have not pressed the same, even in the second show-cause notice and have thus, accepted the findings of the enquiry officer to the effect that the same had not stood proved.

9. Now coming to the second charge-sheet/first supplementary charge-sheet, as far as charge no.1 is concerned, which pertains to the officials having issued directions to stop the work in question, inasmuch as the project in question had been handed over to the National Highway Wing, whereafter though the first running bill dated 31.03.2001 was also paid to the contractor, but the petitioner failed to recover the balance amount of bitumen out of the total quantity issued to the



contractor, it has been submitted that no pecuniary loss has been caused to the Government, inasmuch as the amount equivalent to the amount of balance quantity of bitumen, issued in excess to the contractor, has admittedly been recovered by the successor officer of the petitioner from the final bill of the contractor. As regards charge no.2, it is submitted that the same is hypothetical, inasmuch as though it is alleged that the action of the petitioner had given leverage to the contractor to approach the court of law, but the fact is otherwise. As far as charge no.3 is concerned, it is alleged that though it had been shown that price of 5 Metric ton of bitumen is recoverable from the contractor, leading to the contractor filing a case before the Hon'ble High Court, but the petitioner had kept the final bill pending in his office qua the contractor in question, nonetheless, it is submitted by the Ld. counsel for the petitioner that the said charge neither depicts any instance of gross misconduct on the part of the petitioner nor portrays that any



pecuniary loss has been caused to the government.

10. The Ld. counsel for the petitioner has next referred to the 3rd charge-sheet/2nd supplementary charge-sheet dated 13.02.2007 and as far as charge no.1 is concerned, whereby it has been alleged that the petitioner had submitted claim, after a long period, before the Superintendent Engineer, for approval, it is submitted that the same is neither an instance of gross misconduct nor has resulted in any pecuniary loss to the State Government and the same can, at best, be said to be a case of laxity on the part of the petitioner. As regards charge no.2, it is submitted that the petitioner had checked and verified the bill of the contractor, as per the prescribed procedure, however, it is nowhere mentioned that non-verification of the bills in question, personally by the petitioner, had caused any pecuniary loss. As regards Charge no. 3, it is submitted that the recommendation to increase the scope of work under the heading "Maintenance and Repair



Works” was ultimately approved by the higher officials and moreover, it has nowhere been alleged that the same had caused any pecuniary loss to the Government.

11. The learned counsel for the petitioner has next submitted by referring to the aforesaid three enquiry reports dated 15.05.2007 and 26.07.2007 as also the one dated 26.07.2007 that the same would depict that neither oral nor documentary evidence has been adduced by the prosecution, i.e. the respondents herein, thus mere tendering of documents do not prove the contents thereof, hence, it is submitted that the entire enquiry proceedings are *non-est* in the eyes of law and the present case is a case of no evidence. In this connection, the Ld counsel for the petitioner has relied on the following judgments:-

(i) AIR **1985 SC 1121 (Anil Kumar vs. Presiding Officer & Ors.)**

(ii) **2000 (3) PLJR 10 (Kumar Upendra Singh Parimar vs. B.S. Co-opt. Land Development Bank Ltd. & ors.)**

(iii) **(2009) 2 SCC 570 (Roop Singh Negi**



vs. Punjab National Bank & Ors.)

(iv) (2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)

(v) Judgment dated 05.4.2023, passed in CWJC No. 14324/2013 (Miran Pd. Yadav vs. The State of Bihar & Ors.)

12. The learned counsel for the petitioner has next referred to Rule 43 (b) of the Rules, 1950, which is reproduced herein below:-

“Rule 43 (b)- *The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Govt. by misconduct or negligence, during his service including service rendered on re-employment after retirement:*

Provided that

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or



during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and (c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation. For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed



*under suspension from an earlier date,
on such date; and*

*(b) judicial proceedings shall be
deemed to have been instituted-*

*(i) in the case of criminal proceedings, on
the date on which a complaint is
made or a charge-sheet is submitted,
to a criminal court;and*

*(ii) in the case of civil proceedings, on
the date on which the complaint is
presented, or as the case may be, an
application is made."*

Thus, it is submitted, by referring to Rule 43
(b) of the Rules, 1950 that punishment of
withholding or withdrawal of a pension or any part
of it, whether permanently or for a specified
period, can be ordered only in case it is found,
during the course of departmental or judicial
proceedings that the incumbent is guilt of grave
misconduct or he is guilty of having caused
pecuniary loss to the Government during his
service period. In such view of the matter, the
learned counsel for the petitioner has contended
that a bare perusal of the enquiry report dated



15.05.2007, as also the other two enquiry reports dated 26.07.2007, would show that neither the enquiry officer has found that the petitioner has engaged in grave misconduct nor the petitioner has been found to have caused any pecuniary loss to the Government, hence the disciplinary authority could not have directed for withholding or withdrawal of pension or any part thereof. In this connection, the learned counsel for the petitioner has referred to a judgment, rendered by this Court, dated 21.06.2018, passed in **CWJC No.18055 of 2010 (Kumar Ajit Singh vs. The State of Bihar & Ors.)**, relevant portion whereof is reproduced herein below:-

“The learned counsel for the petitioner submits that the impugned order of punishment dated 17.09.2009 would show that firstly, the same has not furnished any reason for inflicting punishment on the petitioner herein and has merely narrated the series of events which have taken place in the present case and secondly, there is no finding of any grave misconduct as against the petitioner or of having



caused pecuniary loss to the Government on account of the said misconduct so as to warrant infliction of punishment in terms of Rule 43 (b) of Bihar Pension Rules, 1950.

*Having heard the parties and upon going through the materials on record, I am of the view that the impugned order of punishment dated 17.09.2009 suffers from total non-application of mind and does not furnish any reason so as to warrant infliction of punishment on the petitioner herein. Moreover, the impugned order dated 17.09.2009 also does not comply with the provisions of **Rule 43 (b) of Bihar Pension Rules, 1950** to the effect that for inflicting punishment under **Rule 43(b) of Bihar Pension Rules**, it is necessary to come to a conclusion of grave misconduct on the part of the delinquent or pecuniary loss having been caused to the Government on account of the misdeeds of the delinquent, however in the present case, there is no such finding, hence the order of punishment dated 17.09.2009 is not sustainable in the eyes of law and is accordingly, quashed. Since the original order of punishment dated 17.09.2009 has been set aside, consequently the appellate order dated 08.06.2010 is bound to fall and*



is accordingly, quashed.”

13. The aforesaid judgment dated 21.06.2018 has also been upheld by the learned Division Bench of this Court, by a judgment dated 06.02.2023, passed in **LPA No. 1682 of 2018 (The State of Bihar & Ors. vs. Kumar Ajit Singh)**, paragraph nos. 10 to 12 whereof are reproduced herein below:-

“10. Core issue involved in the present lis is whether order of the disciplinary authority is in order or not and further whether L.P.A. bench could interfere with the order of the learned Single Judge or not? From perusal of the disciplinary authority’s order, it is evident that there is no discussion relating to grave misconduct by the disciplinary authority to the extent that there is a non-application of mind and so also in consonance with spirit of Rule 43(b) of Bihar Pension Rules, 1950. Further, we noticed that there is no determination about amount of loss caused to the State Exchequer by the acts of respondent. Unless and until loss of any financial nature is caused by a particular employee and such determination is not



forthcoming in the preliminary inquiry or in the departmental inquiry, one cannot draw inference that concerned employee caused financial loss to the State Exchequer. It is only on presumption that there is loss to the tune of Rs. 3.5 Lakhs as is evident from the records. Therefore, in the absence of any finding that respondent has caused financial loss to the State Exchequer and it has been proved in the departmental inquiry. One cannot draw inference that it is a grave misconduct. Moreover, disciplinary authority has not analyzed whether proved charge amounts to grave misconduct or not?

11. Question of withdrawing the punishment on 03.02.2020 vide Memo No. 1700 was not warranted for the simple reason that learned Single Judge has already set aside the order of penalty dated 17.09.2009 read with 08.06.2010. Orders which were set aside by this Court cannot be withdrawn by the State Government, since penalty orders were not existing in the eye of law as on 03.02.2020.

12. In the light of these facts and circumstances, the appellants have not made out a case so as to interfere with the



order of the learned Single Judge dated 21.06.2018 passed in C.W.J.C. No. 18055 of 2010.”

Therefore, it is the submission of the learned counsel for the petitioner that in view of the law laid down in the case of **Kumar Ajit Singh** (supra), both by this Court as also by the learned Division Bench of this Court, in case there is neither any determination regarding the amount of loss caused to the State exchequer, by the misdeeds of the delinquent nor there is any finding of grave misconduct qua him, no punishment of withholding/withdrawal of pension or a part of it can be inflicted upon a retired employee/pensioner/delinquent.

14. The learned counsel for the petitioner has next contended by referring to the second show-cause notice dated 21.09.2007 that the same does not disclose any evidence, on the basis of which the disciplinary authority has proposed to differ with the findings of the enquiry officer. In this connection, the learned counsel for the petitioner



has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Punjab National Bank & Ors. vs. Kunj Behari Misra**, reported in **AIR 1998 SC 2713**, as also upon a judgment rendered by a co-ordinate Bench of this Court in the case of **Vinod Kumar vs. the State of Bihar & Ors.**, reported in **2007 (3) PLJR 92**. It is also the submission of the Ld. counsel for the petitioner that the impugned order of punishment dated 15.07.2013 is a mere narration of events and the same has not taken into account the defence put forth by the petitioner, apart from clear, cogent and succinct reasons having not been furnished by the disciplinary authority for coming to a conclusion/decision, warranting infliction of punishment upon the petitioner as also the same depicts complete non-application of mind as such the same is fit to be quashed on the said ground alone. In this connection, the learned counsel for the petitioner has relied upon the following judgments:-

- i. Judgment rendered by the Hon'ble Apex



Court in the case of **Oryx Fisheries Private Limited vs. Union of India & Ors.**, reported in **(2010) 13 SCC 427**.

ii. Judgment rendered by a co-ordinate Bench of this Court in the case of **Jeneshwar Sinha vs. State of Bihar & Ors.**, reported in **2022 (1) PLJR 169**.

iii. Judgment dated 21.09.2023, passed in **CWJC No. 17189 of 2015**, rendered by this Court in the case of **Smt. Abha Kumari vs. the State of Bihar & Ors.**

Contentions of the Ld. Counsel for the State:-

15. *Per contra*, the learned counsel for the State has submitted that as far as the first charge-sheet is concerned, the enquiry officer had found the charge no.1 to have been partially proved in his enquiry report dated 15.05.2007, as far as the first supplementary charge-sheet is concerned, the enquiry officer, in his enquiry report dated 26.07.2007, had though found charge nos. 1 and 2 to have not been proved, however, he had found charge no.3 to have been proved and as far as the second supplementary charge-sheet is concerned,



the enquiry officer, in his enquiry report dated 26.07.2007, had found all the three charges, levelled against the petitioner, to have been proved. It is also submitted that the disciplinary authority had then issued a second show-cause notice dated 21.09.2007 to the petitioner, wherein the reasons for differing with the findings of the enquiry officer with regard to charge nos. 1 to 5 of the first charge-sheet and charge nos. 1 and 2 of the first supplementary charge-sheet has succinctly been mentioned.

16. The Ld. counsel for the State has also submitted that after the petitioner had filed his reply to the second show-cause notice dated 21.09.2007, the same was considered at length and only then, the initial punishment order dated 05.01.2009 was passed by the disciplinary authority inflicting the punishment of deduction of 50% each of pension and gratuity amount, whereafter, the petitioner had challenged the same by filing a writ petition bearing CWJC No. 13537 of 2009 and a co-ordinate Bench of this Court, by an



order dated 26.08.2011, had granted liberty to the petitioner to file appropriate revision petition, whereupon the petitioner had filed a revision petition. The disciplinary authority had then considered the said revision petition at length and after dealing with the defence put forth by the petitioner, an amended order of punishment dt. 15.07.2013 has been passed, whereby and whereunder the disciplinary authority has inflicted the punishment of deduction of 25% each of pension & gratuity and it has been further postulated that the petitioner would not be entitled to anything else except the subsistence allowance, for the period of suspension.

17. The Ld. counsel for the respondent-State has next submitted that there is no procedural irregularity in conduct of the disciplinary proceedings, qua the petitioner, hence, this Court would not sit in appeal and re-appreciate the evidence. It is also contended that it is a well settled law that the courts should refrain from interfering with the finding of facts, recorded in a



disciplinary proceeding, except in circumstances, where such findings are patently perverse or grossly incompatible with the evidence on record i.e. based on no evidence. In this connection, the Ld. counsel for the respondent has relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Union of India & Ors. vs. Subrata Nath**, reported in **2022 SCC online SC 1617**.

18. The Ld. counsel for the respondent-State has also submitted that as far as the first enquiry report is concerned, the enquiry officer has taken into account the explanation furnished by the petitioner, however, it is a fact that the petitioner has nowhere stated that no evidence has been adduced by the prosecution. The enquiry report dated 26.07.2007 has also been referred to submit that whatever documents had been demanded by the petitioner, the same were supplied to the petitioner, thus, it cannot be said that the disciplinary authority had engaged in any sort of procedural error. It is next submitted that the second show-cause notice dt. 21.09.2007, issued



by the disciplinary authority, would show that the disciplinary authority has recorded his own findings and reasonings charge-wise, after discussing the facts and circumstances of the case, as also has furnished reasons for differing with the findings of the enquiry officer, which is enough to comply with the principle of fair conduct of the disciplinary proceedings. In this connection, the Ld. counsel for the respondent has referred to a judgment rendered by the Hon'ble Apex Court in the case of **High Court of Judicature at Bombay vs. Shashikant S. Patil & Anr.**, reported in **(2000) 1 SCC 416**.

19. The learned counsel for the respondent-State has contended that the departmental enquiries are not like trials being conducted by the civil courts and only documentary evidence, copies whereof have already been supplied to the delinquent, can be the basis of findings of the enquiry officer/disciplinary authority. In this connection, the Ld. counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Tara Chand Vyas vs. Chairman &**



Disciplinary Authority & Ors., reported in **(1997) 4 SCC 565**. It is incidentally argued that when the genuineness of the document is not in dispute and not questioned by the delinquent, there is no need to examine witnesses in support thereof. In this connection, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of **Director General, Indian Council of Medical Research & Ors. vs. Dr. Anil Ghosh & Anr.**, reported in **(1998) 7 SCC 97**.

20. Now coming to the issue as to whether any pecuniary loss has been caused to the State exchequer, it is submitted by the learned counsel for the respondent-State that charge nos. 1, 2 and 3 of the first charge-sheet and charge no. 1 of the first supplementary charge-sheet pertain to financial loss caused to the Government, whether directly or indirectly, inasmuch as the same pertains to supply of excess bitumen by the petitioner to the contractor and not recovering/ adjusting the value thereof in the subsequent bills, resulting in the contractor being unduly enriched



at the cost of public exchequer. It is also submitted that charges also pertain to the road in question being in bad shape, which also amounts to loss to the State in financial terms in view of the fact that although the State Government has spent a huge amount of money for repair of the road in question, but still the road was found to be in a bad shape, thus, it is submitted that charges levelled against the petitioner, as aforesaid, definitely amount to the petitioner having caused pecuniary loss to the government, which have also stood proved during the course of the departmental proceedings in question.

21. The learned counsel for the respondent-State has also sought to deal with the issue regarding non-recording of the expression “grave misconduct”, in the order of punishment dated 15.07.2013 and has submitted that it is a well settled law that mere non-recording of finding of grave misconduct in the final order of punishment will not be fatal to the case of the prosecution in case the charges alleged have stood proved and a



bare reading of the same itself depicts grave misconduct, involving negligence on the part of the delinquent officer. In this connection, the learned counsel for the respondent-State has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Pandit D Aher vs. State of Maharashtra**, reported in **(2007) 1 SCC 445**. The Ld. counsel for the respondent-State has also contended that the order of punishment dated 15.07.2013 is a detailed order and separately discusses each and every charge, stand of the delinquent, findings arrived at by the enquiry officer & the reasoning of the disciplinary authority for inflicting the punishment in question, hence the impugned order dated 15.07.2013 cannot, by any stretch of imagination, be said to be bereft of non-application of mind much less being an unreasoned order. Incidentally, it is argued that the quantum of punishment inflicted upon the petitioner is commensurate/proportionate to the charges levelled and proved qua the petitioner.

22. The Ld. counsel for the respondent-State has



also contended that once a finding has been recorded, either in a departmental or a judicial proceeding, there is no further requirement of grant of any further opportunity under Rule 43(b) of the Rules, 1950, to the concerned employee with regard to the quantum of pension to be withheld, whether in whole or in part, in view of the judgment rendered by this Court in the case of **Smt. Chintamani Sinha vs. The State of Bihar & Ors.**, reported in **2013 (1) PLJR 439**. As regards, violation of the principles of natural justice, it is submitted that there has been none and to buttress his case, reliance has been placed upon a judgment rendered by the Hon'ble Apex Court in the case of **State of U.P. vs. Om Prakash Gupta**, reported in **AIR 1970 SC 679** and the one rendered by the Hon'ble Apex Court in the case of **K. L. Tripathi vs. State Bank of India & Ors.**, reported in **(1984) 1 SCC 43**.

23. It is also pointed out by the Ld. counsel for the respondent-State that it is a well settled law that in case charges are severable and even one of



the charges, which has stood proved and is sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order. In this connection, reliance has been placed on a judgment rendered by the Hon'ble Apex Court in the case of the **State of U.P. & Ors. vs. Nand Kishore Shukla & Anr.**, reported in **(1996) 3 SCC 750** and the one dated 24.08.2023, passed in **Civil Appeal No. 11196 of 2011**, rendered by the Hon'ble Apex Court in the case of **State Bank of India vs. A.G.D. Reddy**, reported in **2023 SCC OnLine SC 1064**.

DETERMINATION:-

24. I have the learned counsel for the parties and perused the materials on record. As far as the first charge-sheet, containing eight charges is concerned, the enquiry officer, in his enquiry report dated 15.05.2007, has though found the first charge to have been partially proved, but charge nos. 2 to 8 have not been found to have been



proved. As far as the first supplementary charge-sheet is concerned, out of three charges, levelled against the petitioner, the enquiry officer, in his enquiry report dated 26.07.2007, has only found the third charge to have been proved, whereas, as far as the second supplementary charge-sheet is concerned, the enquiry officer has found all the three charges to have been proved, in his enquiry report dated 26.07.2007.

25. This Court finds that though only charge no.1 of the first charge-sheet was found to have been partially proved by the enquiry officer, however, the disciplinary authority had differed with the findings of the enquiry officer qua the charge nos. 1 to 5 and issued a 2nd show-cause notice dated 21.09.2007, wherein it has been admitted that the amount equivalent to the excess quantity of bitumen issued by the petitioner to the contractor, has been recovered after sometime, by the successor officer of the petitioner, as is apparent from page no.71 of the writ petition (part of the second show cause notice dated 21.09.2007), thus admittedly, no



pecuniary loss has been caused to the Government.

26. As far as the first supplementary charge-sheet is concerned, the disciplinary authority, in its second show cause notice dated 21.09.2007, while differing with the findings of the enquiry officer, as recorded in the enquiry report dated 26.07.2007, has though not stated about any pecuniary loss having been caused to the State Government, however, has merely stated that after the officials had been directed to stop the work in question, inasmuch as the project in question had been handed over to the National Highway Wing and the first running bill dated 31.03.2001 had also been paid to the contractor, the petitioner ought to have recovered the amount of bitumen, issued in excess to the contractor, by treating the first running bill as the final bill. Nonetheless, this Court finds that neither there is any whisper about any pecuniary loss having been caused to the State exchequer nor there is any quantification of the amount of loss caused to the State exchequer, obviously on account of the fact that the amount equivalent to



the excess quantity of bitumen, issued to the contractor, has stood recovered/ adjusted by the successor officer of the petitioner. In fact, in the punishment order dated 15.07.2013 also, though it has been stated in paragraph no.4 thereof that on account of excess quantity of bitumen issued to the contractor and its non-adjustment, loss has been caused to the Government, however, neither loss amount has been quantified nor it has been taken into consideration that the disciplinary authority itself, while issuing the second show-cause notice dated 21.09.2007 has admitted that the excess quantity of bitumen, issued to the contractor, has stood adjusted in the final bill, prepared by the successor officer of the petitioner.

27. Therefore, for the reasons mentioned herein above, this Court is satisfied that so far as the charges levelled against the petitioner pertaining to causing loss to the State exchequer, are concerned, the same have not stood proved, especially in view of the admission of the disciplinary authority to the effect that the successor officer of



the petitioner had adjusted the excess amount of bitumen, issued to the contractor, in the subsequent/final bill, apart from the fact that the purported loss, stated to have been caused by the petitioner, has nowhere been quantified. Thus, though one of the essential ingredients of Rule 43(b) of the Rules, 1950, required to be fulfilled for inflicting punishment is that the delinquent should be guilty of having caused pecuniary loss to the State exchequer, by his misconduct or negligence during his service period, however, in the present case, the same is clearly nonexistent. In this connection, reference be had to the judgment rendered by this Court as also by the learned Division Bench of this Court in the case of **Kumar Ajit Singh** (supra).

28. Now coming to the issue, as to whether the petitioner is guilt of grave misconduct, which is yet another essential ingredient of Rule 43(b) of the Rules, 1950, required to be fulfilled for inflicting punishment, this Court finds from a bare perusal of the aforesaid three charge-sheets and the enquiry



report dated 15.05.2007 as also the other two enquiry reports, both dated 26.07.2007, apart from the second show-cause notice dt. 21.09.2007 that the disciplinary authority itself has nowhere termed the charges levelled against the petitioner to be depicting grave misconduct, apart from the fact that most of the charges have not been found to have been proved by the enquiry officer, inasmuch as neither any documentary evidence has been adduced nor any oral evidence has been led to conclusively prove the charges levelled against the petitioner, more so since most of the charges pertain to either improper supervision of the work in question resulting in the roads in question being in bad shape or there being failure to adjust the excess quantity of bitumen issued to the contractor in the subsequent bills or there being delay in processing the bills of the contractor or recommendations having been made to increase the scope of work under the heading "Repair and Maintenance Works", all of which pertain to the period, starting right from the year



1998, when the work had started, upto the date of completion of the work i.e 30.06.2003, however, the petitioner was posted, at the place in question, only in between the period 06.07.1999 to 30.06.2001, at a time when the work was still very much in progress.

29. Yet another aspect of the matter is that the petitioner was not the head of the concerned department, at the place in question, inasmuch as he was merely posted there as the Executive Engineer. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the cases of **Roop Singh Negi** (supra), **Saroj Kr. Sinha** (supra), **Anil Kumar** (supra) & the one rendered by a co-ordinate Bench of this Court in the case of **Kumar Upendra Singh Parimar** (supra).

30. At this juncture, it would be relevant to deal with the submission made by the learned counsel for the respondent-State to the effect that non-recording of the expression "grave misconduct", in the final order of punishment shall not be fatal to the case of the prosecution, in case the charges have stood proved and their bare reading itself



depicts grave misconduct, involving negligence on the part of the delinquent officer, a proposition of law, which has been propounded relying upon a judgment rendered by the Hon'ble Apex Court in the case of **Pandit D Aher** (supra). In this connection, it would suffice to state that in the said case, the Hon'ble Apex Court had come to a finding that indisputably, the charges are of grave nature, the delinquent was whole sole incharge of the scheme in question, which was to be implemented in his block and he being the supervisory head, had a duty to ensure that the scheme is implemented in its true letter and spirit and moreover, all the charges had stood proved, during the course of the enquiry held against him, thus, in this background, the Hon'ble Apex Court had come to a finding, on the basis of the findings arrived at in the departmental enquiry, that the delinquent was guilty of such misconduct and it was not required to specifically mention therein that the delinquent was guilty of grave misconduct or negligence. However, the position is different in



the present case, inasmuch as the petitioner is not the whole sole incharge of the contract in question, the work was also being supervised by the senior officers and most of the charges have not stood proved, during the course of the enquiry held against the petitioner and moreover, the charges levelled in the present case do not appear to be grave in nature, inasmuch as not only the same are superficial but also pertain to a period extending to around six years, whereas the petitioner was posted at the relevant place only for two years. Thus, the judgment rendered by the Hon'ble Apex Court in the case of **Pandit D Aher** (supra) is distinguishable in the facts and circumstances of the present case.

Consequently, this Court finds that the disciplinary authority has not been able to prove that the petitioner is guilty of grave misconduct, inasmuch as neither any allegation of grave misconduct has been levelled against the petitioner nor the enquiry officer, in the aforesaid 3 enquiry reports, has come to a finding that the petitioner is



guilty of grave misconduct nor the second show-cause notice dated 21.09.2007 so depicts nor the order of punishment dt. 15.07.2013 so concludes.

31. Having regard to the conspicuous facts and circumstances of the present case and for the reasons mentioned hereinabove, this Court finds that neither there is any allegation of grave misconduct nor the petitioner has been found to be guilty of grave misconduct nor the petitioner has been conclusively found to have caused pecuniary loss to the Government, thus, in case of absence of any clear finding by the disciplinary authority regarding the petitioner having indulged in grave misconduct or having caused any pecuniary loss to the Government on account of his misdeeds, this Court finds that the impugned order dated 15.07.2013 is not only in derogation but also dehors the statutory provisions contained in Rule 43(b) of the Rules, 1950 and moreover, the same does not satisfy the twin essential conditions, required to be fulfilled for inflicting punishment thereunder, hence the order of punishment dt.



15.07.2013 is not only unsustainable in the eyes of law but is also contrary to the law laid down by the learned Division Bench of this Court in the case of **Kumar Ajit Singh** (supra), thus is quashed.

32. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.10.2023
Transmission Date	NA

