# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.7047 of 2011**

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Pramod Kumar Sinha, S/O Late Sachindra Kumar Sinha R/O Ashiana Digha Road, P.S. Rajiv Nagar, Distt. Patna.

... ... Petitioner/s

Versus

1. The State of Bihar the Principal Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
2. The Additional Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
3. The Deputy Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
4. The Accountant General (Accounts And Entitlement), Virchand Patel Path, Bihar , Patna.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rupak Kumar, Advocate |
| For the State | : | Mr. Manish Kumar, GP-4<br>Mr. Manoj Kumar, AC to GP-4 |
| For the A.G. | : | Mr. Raj Nandan Prasad, Advocate<br>Mr. Vishesh Kumar Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**

**CAV JUDGMENT**

**Date : 20-12-2023**

Heard Mr. Rupak Kumar, learned counsel for the petitioner and Mr. Manish Kumar, learned GP-4 assisted by Mr. Manoj Kumar, AC to GP-4 for the State and Mr. Raj Nandan Prasad, learned counsel for the Accountant General.

2. The present writ petition has been filed for quashing the notification no.201(s) dated 05.01.2011 read with memo no.202(s) dated 05.01.2011 whereby the penalty of withholding of 25% pension has been imposed upon the petitioner in violation of principle of natural justice, arbitrarily,

discriminatory and unreasonably.

3. The petitioner was superannuated on 31.08.2000 from the post of Executive Engineer, Road Construction Department, Government of Bihar, Patna. Before the retirement of the petitioner vide memo no.311 dated 16.03.2000 by which the additional charge of Road Sub-division, Barhara given to Sri Satya Narayan Dubey, Assistant Engineer (Estimating Officer) was withdrawn due to administrative reason and the same was given to Sri Kameshwar Tiwari, Assistant Engineer. In the year 2000 one Sri Satya Narayan Dubey, Assistant Engineer, Sahabad Road Division, Ara made a complaint before the District Magistrate, Ara implicating the petitioner who was then posted as Executive Engineer, Sahabad Road Division, Ara. The District Magistrate was reported to the Department vide letter 24.03.2000 requesting the Department to take appropriate steps in the light of the allegation levelled in the complaint petition against the petitioner and a report was submitted by the Chief Engineer, South Bihar Wing of the Road Construction Department, Government of Bihar.

4. In the meantime, the petitioner was superannuated on 31.08.2000 from the post of Executive Engineer, Road Construction, Government of Bihar, Patna.

5. Vide Resolution No.8092(s) dated 14.11.2000 was issued whereby and whereunder the proceeding under Rule-43(b) of Bihar Pension Rule was initiated against the petitioner with respect of ten charges against the petitioner for irregularities allegedly committed by the petitioner on his posting as Executive Engineer, Shahabad Road Division, Ara. Sri Madan Prasad Singh, Chief Engineer, Central Design Organization, Road Construction Department was appointed as Conducting Officer and Sri Bhagat Chaudhary, Under Secretary, Road Construction Department was appointed as Presenting Officer and preliminary enquiry report of the Chief Engineer and District Magistrate, Bhojpur mentioned in list of the evidence dated 28.03.2000 and 29.03.2000 were enclosed with resolution dated 14.11.2000 and after lapses of about eight months one another resolution no.5228(s) dated 31.07.2001 was issued whereby one more supplementary charges were framed against the petitioner. Shri Madan Prasad Singh who was appointed as Conducting Officer did not conduct the proceeding after which the Divisional Commissioner, Patna was appointed as Conducting Officer, but the Divisional Commissioner shows his inability to conduct the proceeding. Thereafter, Sri Kishore Ranjan Sinha, Superintending Engineer was appointed as

Conducting Officer vide resolution no.4297 dated 02.06.2003 after about three years of superannuation of the petitioner.

6. The petitioner appeared on each and every date fixed by the Conducting Officer and petitioner has also filed written statement for defence on 06.09.2003 and stated that charges alleged do not come under the purview of 43(b) of the Bihar Pension Rules.

7. Learned counsel for the petitioner submits that neither the charge was examined nor any witnesses was examined nor cross-examined nor any hearing given to the petitioner to explain the charges and no pecuniary loss has been cause to the Government.

8. After concluding the proceeding the Conducting Officer has submitted the enquiry report on 24.01.2005. In the proceeding the petitioner was not afford any opportunity whatsoever to convince the Disciplinary Authority to accept the finding of Enquiry Officer.

9. The petitioner was given second show-cause notice vide letter no.8906 dated 02.12.2005. After about eleven month of submission of inquiry report which was enclosed with second show cause asking the petitioner to file reply to second show-cause in respect of charge no.8 and supplementary charge.

Supplementary charge one without recording any tentative reason of referring the inquiry report mentioning therein withholding of ten percent pension as proposed punishment.

10. Pursuant to the aforesaid letter the petitioner has filed his reply to second show-cause on 14.01.2006 stating therein that the documents mentioned inquiry report were never supplied to him and raised the point that authors of documents were neither examined nor allowed to the cross-examined. Thereafter, the petitioner was asked second show-cause notice second time vide letter no.5561(s) dated 02.05.2007 whereunder 25% curtailment of pension was mentioned as proposed punishment to the petitioner.

11. Petitioner filed reply to second show-cause second time on 28.08.2008 refuting all the charges against him and the charges against the petitioner have been proved on the basis of preliminary enquiry report authors who were never examined by department nor allowed cross-examined by the petitioner.

12. Learned counsel for the petitioner submits that the charges levelled against him do not come under the purview of Rule-43(b) of Bihar Pension Rule and the charges neither constitute grave misconduct nor the pecuniary loss cause to government and no notice under Rule-97 of Bihar Service Code

have been given to the petitioner in respect of determination of period of suspension and as such in view of the judgment in the case of Dinesh Kumar Singh Vs. The State of Bihar & Ors. report in 2006(4) PLJR 514 and in case of Kumar Upendra Singh Parimar v. B.S. Co-opt. Land Dev. Bank Ltd. & Ors., reported in 2003 (3) PLJR 10 particular paragraph no.12, 16, 18 and 19.

> "**12.** Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent

employee just because the delinquent employee is absent.

**16.** Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

**18.** This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

**19.** Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See *D.K. Jadav* v. *J.M.A. Industries Ltd.*, reported in (1993) 3 SCC 259 : 1994 (2) PLJR (SC) 55."

13. Further the learned counsel for the petitioner relied upon in case of Roop Singh Negi Vs. Punjab National Bank reported in 2009 2 (SCC) 570, particular paragraph no.14, 15 and 23.

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasijudicial 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. 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.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can

> under no circumstances be held to be a substitute for legal proof."

14. Learned counsel for the petitioner submits that the preliminary inquiry report enclosed with resolution dated 14.11.2000 lose their importance on issuance of charge memo but the same were relied upon by the inquiry officer and disciplinary authority to inflict penalty upon the petitioner, author of whom were neither examined nor cross-examined which rendered the impugned order invalid and bad in the eye of law and contrary to settled law by this Hon'ble Court as well as Hon'ble Apex Court.

15. Learned counsel for the State submits that the finding in a disciplinary proceeding rest on preponderance of probability and the proceeding was initiated in accordance with rule and after giving due opportunity to the petitioner, the impugned order has been passed.

16. In view of the aforesaid it transpires that there was no evidence to prove the charge or to confirm the allegations. Apparently the decision impugned, is resting on no evidence.

17. In the result the notification no.201(s) dated 05.01.2011 read with memo no.202(s) dated 05.01.2011 cannot be upheld and are accordingly quashed and set aside.

18. The writ petition is allowed.

19. The petitioner is entitled for consequential benefits and the respondents are directed to pay all consequential benefits to the petitioner which he is entitled within a period of three months from the date of receipt/production of this order.

**(Rajesh Kumar Verma, J)**

Prakash Narayan

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | 06.11.2023 |
| **Uploading Date** | 03.01.2024 |
| **Transmission Date** | |