

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2730 of 2020

=====

Praween Kumar Son of Late Vaidyanath Prasad Resident of Flat No. 205
Singh Mension, Kaliket Nagar, Bailey Road, Danapur Cum Khagaul, Patna,
P.S.- Rupaspur, District- Patna, at present posted as Assistant Engineer,
Advanced Planning Division No.-1, Building Construction Department,
Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar.
2. The Principal Secretary, Building Construction Department, Govt. of Bihar,
Bishweshwaraiya Bhawan, Patna.
3. The Principal Secretary, Urban Development Department, Govt. of Bihar,
Patna.
4. The Engineer-in-Chief, Building Construction Department, Govt. of Bihar,
Bishweshwaraiya Bhawan, Patna.
5. The Chief Engineer (South), Building Construction Department, Govt. of
Bihar, Bishweshwaraiya Bhawan, Patna.
6. Superintending Engineer, Building Construction Division, District- Patna.
7. The Joint Secretary-cum-Chief Vigilance Officer, Road Construction
Department, Govt. of Bihar, Bishweshwaraiya Bhawan, Patna.
8. The Deputy Secretary (Vigilance) Road Construction Department, Govt. of
Bihar, Bishweshwaraiya Bhawan, Patna.
9. The Additional Departmental Enquiry Commissioner, Govt. of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Samrendra, Advocate
For the Respondent/s	:	Mr. Raj Ballabh Pd. Yadav (Aag11)
		Mr. Ashok Kumar Dubey, AC to AAG-11

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 09-05-2024

Heard learned counsel for the petitioner and

learned counsel for the State.

2. The present writ petition has been filed for the

following reliefs:-



(i) Issuance of an order, direction or a writ in the nature of Certiorari, quashing/ setting aside the order impugned as contained in Memo order No. 4326(s) dated 30.05.2013 (Annexure-17) whereby and whereunder the petitioner has been reverted to the Post the of Assistant Engineer in lowest pay scale for whole service period, as well as permanent posting on non-work post.

(ii) Issuance of an order, direction or a writ in nature the Certiorari, quashing/ setting the order impugned as contained in letter 5140 dated 07.06.2019 (Annexure-21) whereby and where under the review petition for review of order of punishment as contained in Annexure- 17 (Supra) has been rejected.

(iii) For a declaration that the memo of charge dated 02.07.2009 is without jurisdiction and unsustainable in eye of law as the same has not been framed and approval by the competent authority.

(iv) For a declaration that the findings of the Inquiry Officer, Disciplinary Authority and the Reviewing Authority are based on no evidence.

(v) For commanding the Respondents to restore the petitioner to the post of Executive Engineer with all



consequential benefits as if the orders impugned were never in distance.

(vi) For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

3. Learned counsel for the petitioner submits that the petitioner was appointed as an Assistant Engineer in Public Works Department, Government of Bihar, after due recommendation from Bihar Public Service Commission. Counsel submits that in the year 2007 he was promoted to the post of Executive Engineer, which is a Class-I Gazetted Post. Counsel submits that in the year 2007 the petitioner was posted as Executive Engineer in West Building Division, Danapur, and also he was given additional charges of two other Divisions having enormous work load. Counsel submits that a departmental proceeding has been initiated against him, which was subsequently resulted into punishment and against the final order of punishment he has challenged the punishment order in review and, thereafter, moved before this Court in CWJC No.1332 of 2015. The said writ petition was disposed off with certain liberty. The concluding portion of the said order is as follows:-



“9. The order of the Reviewing Authority dated 10.3.2014 is without assigning any reason whatsoever. In view of settled principles of law requiring recording of reasons is unsustainable in law.

Order of the reviewing authority dated 10.03.2014 is quashed. Matter is remitted to the Reviewing Authority. Issues raised in the review petition, which have been taken note of in the instant order, are required to be considered by the Reviewing Authority.

10. Since prior to institution of the instant writ proceedings, the issue regarding charge memo being without jurisdiction, has not been raised before the authority, Counsel for the petitioner has sought liberty to raise said plea with reference to the relevant Rules in this regard by supplementing his memorial dated 14.6.2013. The liberty, as prayed for, is granted. The petitioner should supplement his review referring to the extant rules and the service condition wherein the competent authority has been prescribed for issuance of charge memo on the petitioner, who at the relevant time was posted as Executive



*Engineer, Building Construction
Department, Danapur.*

11. If such supplementary application is filed within four weeks, the same is required to be considered in accordance with law by a reasoned and speaking order. It is expected that since the issue is now about ten years old already, that the respondent authorities would take a final decision on the review application expeditiously and without any undue delay.

12. The writ petition is disposed of with the aforesaid liberty.”

4. After passing the said order by this Hon'ble Court the petitioner has represented before the Reviewing Authority, vide Annexure-20 and in response thereof the Reviewing Authority has passed final order contained in Memo No.5140 dated 07.06.2019, which is the order impugned here. In the present writ petition, learned counsel for the petitioner submits that liberty was granted by this Hon'ble Court at the time of passing final order in the writ petition to challenge the charge memo also before the Reviewing Authority which has not been taken into consideration lawfully and it is due to this



reason in the present writ petition the petitioner has challenged the charge memo also that the said charge memo is basically a non-jurisdictional decision. Counsel submits that the said charge memo has been issued by a person who is not competent to issue charge memo to the petitioner as he is not the appointing authority. In support of his contention, learned counsel for the petitioner submits that the case of **Union of India Vs. B.V. Gopinath** reported in **(2014) 1 SCC 351** has completely covers his case. Learned counsel for the petitioner submits that the ratio laid down in the said case is very much clear that the protection has been granted to a public servant under Article 311 of the Constitution of India and this judgment clearly said in paragraphs 40 and 41 and subsequently in paragraphs 50 and 55 of the said judgment that only taking consent for issuance of departmental proceeding shall not proper; rather full consent with regard to application of mind at the time of issuance of the charge memo by the appointing authority is necessary. In support of the ratio laid down in the said decision, counsel submits that the State has already filed counter affidavit in the earlier writ petition. The copy of the said counter affidavit has been filed in the present writ petition as Annexure-12, whose paragraph-11 clearly states that Hon'ble



Chief Minister approved the proposal on 30.03.2009 to initiate the departmental proceeding against the petitioner and to issue charge memo against him, which is evident from the concerned file. The copy of the file has also been attached in the writ petition. He subsequently submits that in paragraph-30 it has been categorically pleaded by the State that Hon'ble Chief Minister has already approved the proposal to issue memo of charge to the petitioner under Annexure-A. Therefore, the memo of charge in form 'K' containing 11 charges along with evidences in support of these charge was served upon the petitioner under the letter at Annexure-10 series to the writ petition and he was directed to submit his reply within 15 days with approval of Secretary, RCD, Government of Bihar, Patna. By virtue of these pleadings, counsel for the petitioner wants to submit that from the pleading of the State it become very much clear that only approval for initiation of departmental proceeding has been taken whereas the charge has been issued by the approval of the Secretary, RCD, Government of Bihar and not by the approval of the Hon'ble the Chief Minister. He submits that the pleading made by the State has been fully supported by the annexures, which is Annexure-A, where it transpires that the Hon'ble Chief Minister has only directed to



suspend and initiate the departmental proceeding, but not approved the charge memo.

5. Learned counsel for the petitioner submits that in the order impugned the plea has been taken by the Reviewing Authority that the consent on charge has been taken by Hon'ble the Chief Minister which is apparent from letter No.1708 dated 11.05.2019. Annexure-A to the said counter affidavit of the State is basically the same letter, which is Annexure-12 of the present writ petition which are identical. Learned counsel for the petitioner submits that in this background and in the light of the ratio laid down in the case of **Union of India Vs. B.V. Gopinath** (Supra), this writ petition is fit to be allowed and the entire charge memo and subsequent orders are fit to be set aside and relief be granted to the petitioner for all his consequential relief relating to his service as the petitioner has retired from service on 30.04.2023.

6. Learned counsel for the State, on the other hand, vehemently opposes the contention of the learned counsel for the petitioner and submits that this writ petition is fit to be dismissed due to the reason that the petitioner has earlier moved before this Hon'ble Court and this Hon'ble Court has not interfered in the original order and only directed the Reviewing



Authority to pass order afresh. Learned counsel submits that this Court has also directed the State to file a supplementary affidavit indicating that who is the appointing authority of the petitioner. Counsel submits that in the supplementary counter affidavit the stand has been taken by the State that the departmental proceeding has been initiated against the Executive Engineer and there is no direct recruitment on the post of the Executive Engineer. Therefore, it is not a post on which appointment used to be made; rather promotion used to be made of the Assistant Engineer on the said post and the person who is competent to pass order for promotion is the Secretary of the department. Learned counsel further submits that earlier different works department like R.C.D., R.W.D., B.C.D. etc. would collectively functioning as P.W.D. and R.C.D. as nodal department for engineering services. But now after works department division each department has been empowered to advertise and recruit through B.P.S.C. Learned counsel further submits that services of the Executive Engineer of the Works Departments is guided by the Bihar Engineering Services Cadre-I Rules, 1939, so provided under the Bihar Public Works Code. He submits that the Fourth Schedule of Rule 21 of the Executive Rules indicates that Departmental



Minister through Principal Secretary/Secretary is competent for promotional matters of those recommended by the B.P.S.C. and according to Bihar Engineering Service Rules, 1939, the Governor of State has been authorized as the appointing authority.

7. Learned counsel submits that the decision of initiation of departmental proceeding has been done by Hon'ble the Chief Minister and subsequently the punishment order has been passed by the Governor. Therefore, this order is sustainable in the eye of law and the writ petition ought to be dismissed.

8. In response thereof, learned counsel for the petitioner placed a Full Bench decision of this Court on which the issues relating to appointing authority of the members of the Bihar Engineering Services Class-I has been decided. It has been decided in this case that whether the Governor or council of ministers are the appointing authority. He submits that in the case of **Bhupendra Narayan Jha Vs. The State of Bihar** reported in **1984 PLJR 640 (FB)**, the Hon'ble Full Bench of this Court has decided that Governor of Bihar is the appointing authority in the matter of members of Engineering Services Class-I.

9. After hearing the parties and upon going



through the documents on record, it transpires to this Court that the impugned order indicates that on charge memo approval has already been taken by the competent authority who is Hon'ble the Chief Minister has been taken and the Reviewing Authority relied on letter No.1708 dated 11.05.2009 the said letter is already present in the writ petition at page-130, which is Annexure-A to the counter affidavit filed by the State in CWJC No.1332 of 2015 Annexure-12 of the present writ petition. Bare perusal of this letter, it transpires to this Court that approval of charge memo has not been taken from the alleged competent authority Hon'ble Chief Minister; rather the Hon'ble the Chief Minister has only ordered to initiate the departmental proceeding nothing else. As such, the contention made by the Reviewing Authority in the impugned order is factually not correct.

10. With a view to decide this case, the case of **Union of India Vs. B.V. Gopinath (Supra)**, it is necessary to quote the constitutional provisions of Article 311 of the Constitution of India, paragraphs 40, 41, 50 and 55 of the judgment are relevant which reads as follows:-

“40. Article 311(1) of the Constitution of India ensures that no person who is a member of a civil



service of the Union or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (sic). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS (CCA) Rules, 1965.

41. Disciplinary

proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the



charge-sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge-sheet. Such a charge-sheet can only be issued upon approval by the appointing



authority i.e. Finance Minister.

50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.

55. Although number of collateral issues had been raised by the learned counsel for the appellants as



well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge-sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law.”

11. Upon bare perusal of the provisions laid down under Article 311 of the Constitution of India and in the operating part at paragraph-50 of this judgment, it transpires to this Court that it has been categorically held by Hon’ble Supreme Court of India that the approval granted by the Hon’ble the Chief Minister for initiation of departmental proceeding would not amount to approval of charge memo and, hence, this Court is of the firm view, due to the reasons mentioned above, that the charge memo issued against the petitioner is defective and once the charge memo is defective then automatically the entire proceeding is bad-in-law as in this regard Hon’ble Supreme Court has categorically held in paragraph-55 that when the charge-sheet/charge memo has not been approved by the disciplinary authority and nonest in law then the entire departmental proceeding including the enquiry, final order and reviewing order are also nonest in the eye of law.

12. In this view of the matter, the writ petition is



allowed and orders contained in Memo No.4326(s) dated 30.05.2013 (Annexure-17), review order contained in letter No.5140 dated 07.06.2019 (Annexure-21) and charge memo dated 02.07.2009 are hereby quashed.

13. It transpires to this Court that since petitioner has already retired from service on 30.04.2023, as such, State-respondents are directed to provide all consequential reliefs to the petitioner attached to his service and his post retiral dues within six months from the date of receipt/production of a copy of this order.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.05.2024
Transmission Date	NA

