

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3756 of 2020**

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Balmiki Sharma, S/o- Late Rajnandan Sharma, Resident of Mohalla-  
Chandpur Bela, Anil Bhawan Gali, P.S.- Jakkanpur, P.O.- G.P.O., District-  
Patna, Pin - 800001.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Joint Secretary-cum-Director, Land Acquisition Rehabilitation, W.R.D., Govt. of Bihar, Patna.
4. The Addl. Secretary-cum- Director, W.R.D., Government of Bihar, Patna.
5. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Muzaffarpur.
6. The Executive Engineer (Design Division) Muzaffarpur, District Muzaffarpur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shally Kumari, Adv.  
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**ORAL ORDER**

2      05-01-2024                      Heard learned counsel for the petitioner and learned  
counsel for the State.

2. The present writ petition has been filed for quashing of the Memo No. 633 dated 06.06.2019 annexed as Annexure-7 issued by Joint Secretary-cum-Director, Land Acquisition and Rehabilitation (Now Additional Secretary, W.R.D.), Government of Bihar, Patna and further for quashing of letter No. 1204 dated 30.09.2019 annexed as Annexure-9 issued by the Addl. Secretary-cum-Director, Water Resource



Department, Government of Bihar, Patna by which review of order of punishment has been made.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Amin on 01.08.1979 by the Director, Land Acquisition Rehabilitation, Irrigation Department (Now W.R.D.), Government of Bihar and posted in Special Land Acquisition Office, Kashi Project, Sakri, District-Madhubani. Counsel submits that the petitioner retired on 30.11.2016 as Amin from Special Land Acquisition, Sone Project, Aurangabad, District-Aurangabad. Counsel further submits that on the basis of the complaint made by one Rameshwar Sah before the Vigilance Court, Muzaffarpur with regard to the payment of Rs. 5,13,345/- in the matter of acquisition of Plot No. 468, Khata No. 640 area 0.015 decimal connected with Award No. 146 in Land Acquisition Case No. 4/2008-09. On the basis of said complaint, a Vigilance Case No. 53/15 was registered and after registration of the said case, show cause was issued to the petitioner in which the petitioner answered on 27.06.2016.

4. Learned counsel for the petitioner submits that without consideration of his show cause, a departmental proceeding was directed to be initiated *vide* Memo No. 1355



dated 11.08.2016 annexed as Annexure-3 for which Special Land Acquisition Officer, Sone Project, Aurangabad was appointed as Conducting Officer. Counsel also submits that *vide* letter no. 387 dated 13.03.2019 annexed as Annexure-5, second show cause notice has been issued to the petitioner along with the enquiry report in which the petitioner was exonerated from charge no.1 and so far as charge no.2 is concerned, it was not recorded due to the unavailability of any finding in the Vigilance Case No. 53/15. Counsel further submits that second show cause was demanded from the petitioner in which the petitioner has submitted his second show cause on 22.04.2019. Counsel submits that a defective second show cause was issued as there was no reason has been assigned to differ from the decision of the enquiry report on charge no.1.

5. Learned counsel for the petitioner further submits that in answering the second show cause, the petitioner has also intimated about the submission of the final form due to lack of evidence on 04.12.2018 and in the meantime, the petitioner was superannuated on 30.11.2016 and subsequently, the proceeding has been converted into proceeding under section 43(B) of the Bihar Pension Rules, 1950. Counsel also submits that in the order contained in Memo No. 633 dated 06.06.2019 converting



the proceeding under section 43(B) of the Bihar Pension Rules, 1950, none of the points submitted in the second show cause have been considered particularly relating to unavailability of the reasons due to which the Disciplinary Authority differs from the findings of the Enquiry Officer on charge no.1. Counsel further submits that there is also no finding with the effect of submission of final form in the vigilance case and due to these two reasons, counsel submits that only due to non consideration of second show cause properly, the order 06.06.2019 has been passed followed by the Appellate order which is Annexure-9 dated 30.09.2019.

6. Learned counsel for the State on the other hand submits that the case of the petitioner is fit to be dismissed due to the reason that there is no procedural lapses in this case. Counsel also submits that the departmental proceeding has been initiated during the period when the petitioner was in service and the said departmental proceeding could not be concluded within his service tenure and it is due to this reason, after retirement, the said departmental proceeding has been converted into proceeding under section 43(B) of the Bihar Pension Rules, 1950. Counsel further submits that in the original order i.e. Annexure-7, there is no whisper about the vigilance case, but in



the appellate order i.e. Annexure-9, there is specific finding that exoneration in the criminal case shall not be a certificate for exoneration in the departmental proceeding and therefore, the petitioner has no case at all.

7. Upon hearing the arguments of both the parties, it transpires to this Court that the points mentioned in the second show cause has not been taken into consideration by the Disciplinary Authority who passed the order under section 43(B) of the Bihar Pension Rules, 1950. Neither the ingredients of section 43(B) of the Bihar Pension Rules, 1950 nor there is any whisper about the effect of closing of the vigilance case has been mentioned in the said order.

8. Hence, in view of this Court, Memo No. 633 dated 06.06.2019 annexed as Annexure-7 issued by Joint Secretary-cum-Director, Land Acquisition and Rehabilitation (Now Additional Secretary, W.R.D.), Government of Bihar, Patna is defective and therefore, it is hereby set aside and in result the letter No. 1204 dated 30.09.2019 annexed as Annexure-9 issued by the Addl. Secretary-cum-Director, Water Resource Department, Government of Bihar, Patna shall automatically vitiate.



9. Liberty is hereby granted to the State that he may pass a fresh order considering all those points mentioned in second show cause afresh and then take action within 6 months from the date of production of the order before the authority.

10. Accordingly, with the above observations and directions, this writ petition is hereby allowed.

**(Dr. Anshuman, J.)**

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