

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3940 of 2022

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Ram Binoy Sinha, Son of Late Ram Naresh Singh Resident of Pratap Palace
Apartment, Flat No. - 404, Krishi Nagar, A.G. colony, P.S. - Rajeev Nagar,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Water Resources
Department, Bihar, Patna.
2. The Joint Secretary to the Government Water Resources Department, Bihar,
Patna.
3. The Additional Secretary to the Government, Water Resources Department,
Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Bihar Patna - cum-
Enquiry Officer.
5. The Executive Engineer, Flood Control Planning and Monitoring Presenting
Officer.
6. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Indu Bhushan

For the Respondent/s : Mr. Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 12-07-2024

On 13th August 2017, the rein embankment
constructed on the bank of *Lalbakaya* river washed away near
Narottam village due to seepage of water as a result of
destruction/damage of the rein of the said rein embankment. There
were loss of lives and livelihoods. The petitioner being the
Executive Engineer under the Water Resource Department, posted
at Bagmati Division, Sitamarhi was directed by the department to
keep constant vigil over the said embankment so that as per the
requirement, necessary repair of the said embankment may be



made. However, it was alleged that the petitioner did not carry out the departmental order and direction and for such failure, the incident of damage to the embankment took place. The inaction and omission to work on the part of the petitioner were held to be an act of negligence and carelessness towards his duty, arbitrariness, and departmental misconduct. After the destruction of the embankment, responsibility was fixed upon the petitioner and a departmental proceeding was initiated on the basis of the charge formulated in the manner narrated in the above paragraph. The memorandum of charge dated 13th August 2017 states the report of the Chief Engineer, Flood Control, Water Drainage as the only documentary evidence to prove the charge against the petitioner. After receiving the memorandum of charge, the petitioner prayed for certain documents to give the statement of defense against the charge framed against him. The documents are as follows:-

(1) मुख्य अभियंता बाढ़ नियंत्रण एवं जल निस्सरण, जल संसाधन विभाग, मुजफ्फरपुर एवं अध्यक्ष बाढ़ संघर्षात्मक बल, मुजफ्फरपुर प्रक्षेत्र का प्रमंडलाधीन तटबंधों का बाढ़ पूर्व/बाढ़ के दौरान दिनांक 14.09.2017 तक का निरीक्षण संबंधित प्रतिवेदन की अभिप्रमाणित छाया प्रति ।

(2) बाढ़ पूर्व तैयारी से संबंधित विभागीय निदेश की अभिप्रमाणित छाया प्रति जिसमें



आक्राम्य/अतिआक्राम्य/ अन्य (सामान्य) तरह के स्थलों पर किये जाने वाले तैयारी / प्रावधानों का समावेश हो।

(3) बैरगनिया रिग बाँध का अनुमोदित वृहद योजना प्रतिवेदन (डी०पी०आर०) की अभिप्रमाणित छाया प्रति।

(4) प्रमंडलाधीन स्वीकृत तकनीकी पदाधिकारियों का संख्या बल तथा पदस्थापित तकनीकी पदाधिकारियों के संख्या बल से संबंधित प्रतिवेदन की अभिप्रमाणित छाया प्रति।

(5) नेपाल प्रभाग में ललबकैया बायाँ तटबंध एवं बागमती दायों तटबंध के क्षतिग्रस्त स्थलों की सूची मापी संहित।

(6) नेपाल प्रभाग में ललबकैया नदी के जलग्रहण क्षेत्र का वर्षापात का आँकड़ा दिनांक 11.08.2017 से 13.08.2017 तक के प्रतिवेदन की अभिप्रमाणित छाया प्रति।

(7) नेपाल प्रभाग के ललबकैया बायाँ तटबंध एवं बागमती दायों तटबंध के बीच बैरगनिया रिग बाँध तक का कंटूर मैप की अभिप्रमाणित छाया प्रति।

(8) बागमती प्रमंडल, सीतामढ़ी के अन्तर्गत बाढ़ अवधि 2017 का गेज रजिस्टर (ढंग स्थल, गोवाबारी वीयर एवं सोनाखान) की अभिप्रमाणित छाया प्रति।"

2. It is contended on behalf of the petitioner that those documents were not supplied to him but in spite of the non-submission of those documents, the petitioner was compelled to file his statement of defense to the charge. The statement of defense was not accepted, and accordingly, a departmental proceeding was initiated. The inquiry was conducted by the higher authority of the petitioner who submitted a report upholding the



petitioner guilty for the damage caused in the embankment of Lalbakeya river. The petitioner then submitted a second show-cause before the disciplinary authority, but the disciplinary authority passed an order of punishment against him. The said order of punishment was upheld by the appellate authority and the Reviewing Authority. As a last resort, the petitioner has filed the instant writ petition for appropriate relief.

3. The respondents have filed as many as three counter-affidavits, of which the learned Advocate on behalf of the respondents refers to the supplementary counter-affidavit filed by respondent nos. 01 to 05 on 18th March 2023. In the said supplementary counter-affidavit, it is contended on behalf of the respondents that the petitioner being the Executive Engineer was the custodian of all the documents that he demanded for giving a statement of defense and necessary documents were supplied to the petitioner along with the memorandum of charge.

4. I am not in a position to accept such a submission made by the learned Advocate for the respondents, mainly, on the ground that if some supporting documents are supplied along with the memorandum of charge, the reference of those documents is recorded in the memorandum of charge itself. In *Prapatra-K*, this Court does not find any such reference that the documents which



were called for by the petitioner were supplied to him. The learned Advocate for the respondents submits that the petitioner unnecessarily claimed certain relevant documents only to drag this proceeding. Those documents were not necessary in support of the statement of defense.

5. It is needless to say that the allegation levelled against the petitioner in the form of a departmental charge is absolutely technical in nature. At the risk of repetition, it is recorded that the charge against the petitioner was due to his negligence, water sipped through the embankment of the said river, causing damage and destruction of the embankment. It is not possible for a layman, having no expertise in engineering, architecture, and construction to ascertain as to whether seepage of water destroys the embankment of the river or not. For the purpose of his defence, if the petitioner wanted certain documents which were under the custody of some office under the Water Resource Department, the copies of those documents ought to have been supplied to the petitioner.

6. Another important aspect of this inquiry proceeding against the petitioner is that in the memorandum of charge, the names of the presenting officer and inquiring officer were not stated and that is a clear violation of Rule 17 of the Bihar C.C.A. Rules, 2005.



7. For the reasons stated above, this Court is of the view that the order of punishment passed in the departmental proceeding on 20.06.2019 and affirmed by the appellate authority on 29.07.2019 as well as by the reviewing authority on 15.05.2020 are set-aside and quashed.

8. This Court was of the opinion that the departmental proceeding ought to remand back for taking a fresh decision on the basis of the statement of defence to be submitted by the petitioner on perusals of the documents claimed by him.

9. However, the departmental proceeding cannot be directed to be continued because of the fact that the petitioner has already been superannuated after retirement, therefore, departmental proceeding under Bihar CCA Rules, 2005 cannot continue and, accordingly, the instant writ petition is allowed.

10. The order passed in the departmental proceeding and affirmed in the appeal and also in the revision are quashed and set aside.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
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