

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14762 of 2011

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Ray Dhirendra Bahadur S/o Sri Ganga Prasad, R/o Village- Toofanganj, P.S.-
Rahui, Distt.- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar, through the Director Fisheries, Department of Animal Husbandary, Government of Bihar, Patna.
2. The District Magistrate, District Vaishali, Bihar.
3. The Special Secretary Vigilance Department, Government of Bihar, Patna.
4. The Deputy Development Commissioner, Vaishali, Bihar.
5. The Chairman, Zila Parishad, Vaishali, Bihar.

... .. Respondents

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Appearance:

For the Petitioner	:	Mr. Prabhat Ranjan, Advocate
For Vigilance Deptt.	:	Ms. Archana Palkar Khopde, Advocate
For the State	:	Mr. Neeraj Nandan, GP-20

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date: 01-07-2024

Heard Mr. Prabhat Ranjan, the learned counsel for the petitioner, Ms. Archana Palkar Khopde, the learned counsel appearing on behalf of the Vigilance Department and the learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs:

(i) For quashing of Memo No. 530 dated 08.08.2011, and its consequential letter no. 531 dated 08.08.2011, as contained in Annexure-2 series issued by respondent no. 2, whereby a regular departmental proceeding and suspension of the petitioner has been ordered and further recovery of an amount of Rs. 4,14,679/- (Rupees four lakhs



fourteen thousand six hundred and seventy-nine) has also been ordered, which is to be deposited by the petitioner within a period of fortnight for alleged irregular payments in connection with a scheme of year 2007, without there being any enquiry, any show cause notice or any hearing being afforded to the petitioner.

(ii) For quashing of the ex parte enquiry report dated 23.05.2011, submitted by the Executive Engineer, Technical Vigilance Cell, Patna, whereby several actions having serious civil consequences have been recommended against the petitioner.

(iii) For quashing of the letter bearing Memo No. 4036 dated 11.07.2011, whereby the Special Secretary to the Government has directed the District Magistrate, Vaishali to recover the amount of Rs. 8,29,358/- (Rupees eight lakhs twenty-nine thousand three hundred and fifty-eight) from the petitioner and also for his suspension and initiation of departmental proceeding against him.

3. Learned counsel for the petitioner submits that petitioner was initially appointed as Junior Engineer in the year 2003 and was posted at the District Fisheries Office, Hajipur, Bihar. The petitioner was put on deputation to the Zila Parishad as a Junior Engineer for execution of various developmental programs by the Deputy Development Commissioner in the year 2006 and has not been transferred to District Fisheries Office, Siwan.

4. Learned counsel for the petitioner submits that in the financial year 2007-08, a scheme of beautification of pond situated



near Gurmiya Middle School was sanctioned with an estimated cost of Rs. 10,12,600/- (Rupees ten lakhs twelve thousand and six hundred), and the petitioner being the District Engineer, was made the Executing Agency of the Scheme.

5. Learned counsel for the petitioner submits that pursuant to financial sanction of the aforesaid scheme, an amount of Rs. 9,11,340/- (Rupees nine lakhs eleven thousand three hundred and forty) was disbursed for the aforesaid beautification work of the village pond. As per the estimate and the work order, the pond was to be dug seven feet deep with the particular rectangular shape.

6. Learned counsel for the petitioner submits that it is pertinent to mention here that as per the scheme of the project and also the work order as contained in Memo No. 95, dated 02.02.2008, issued by the respondent no. 4, before initiation of the work, the same was to be passed by the Gram Sabha concerned and for each scheme, one local vigilance and monitoring Committee was to be established. The scheme further stipulates that the estimate of the work should be informed to the monitoring Committee and after the completion, a certificate of completion work should be placed before the aforesaid monitoring Committee so that the social audit could be done. Besides the aforesaid direction, certain other guidelines were also issued in the work



order and the petitioner submits that all the directions have been strictly complied with the entire scheme and the work was monitored by the local vigilance and monitoring Committee.

7. Learned counsel for the petitioner submits that unexpectedly, after a passage of more than three and half years, on 10.08.2011, the petitioner was served one Memo No. 530 dated 08.08.2011 and one letter no. 531 dated 08.08.2011, issued by respondent no. 2, who has ordered the petitioner to deposit a sum of Rs. 4,14,679/- (Rupees four lakhs fourteen thousand six hundred and seventy-nine) before the Deputy Development Commissioner, Vaishali within a period of fortnight and also ordered for suspension and initiation of departmental proceedings against the petitioner for alleged irregular payment made by the petitioner in connection with the aforesaid scheme. The perusal of the aforesaid order depicts that the same has been issued pursuant to an enquiry report as contained in letter no. 4036 dated 11.07.2011.

8. Learned counsel for the petitioner submits that no such enquiry was ever made in the presence of the petitioner, neither any notice was issued to the petitioner to appear before the enquiry officer, nor the petitioner had ever been informed about the decision to initiate an enquiry with regard to the aforesaid scheme which was executed by the petitioner and the copy of the



enquiry report has also not been served to the petitioner. The action of the respondents to unilaterally act on an enquiry report without allowing the petitioner to participate in the enquiry or giving the petitioner a chance to rebut the findings in the enquiry report, the authority has passed the aforesaid order and apart from that the fixation of the amount of recovery is also arbitrary and without any reasonable nexus and after perusal of the entire order (Annexure-2), the same does not depict any rationale as to how the aforesaid amount has been arrived at, and it is a settled principle of administrative law that an employee is entitled to a copy of the report and the materials which are sought to be used against the employee. The order of recovery of the aforesaid huge amount without any notice is causing serious prejudice to the petitioner. The enquiry report on the basis of which the impugned decision of the departmental proceeding and recovery has been taken was an ex parte enquiry and no notice was issued to the petitioner and the decision to initiate an enquiry was also not communicated to the petitioner and enquiry report was also never communicated to the petitioner and none of the executing agency like the District Engineer, Assistant Engineer or the petitioner were called to witness participation in the enquiry and at no point of time any explanation has been called from the petitioner on the basis of the said enquiry report against the completed action and the fixation of



amount of recovery of Rs. 4,14,679/- (Rupees four lakhs fourteen thousand six hundred and seventy-nine) is also arbitrarily and is without any rationale and logic.

9. Learned counsel for the petitioner submits that in the meantime, the respondents giving effect to the letter of the District Magistrate dated 08.08.2011, which was subject matter of the challenge in the present writ petition. The District Fisheries Officer framed the Memo of charge on 24.02.2012 directing to initiate the departmental proceeding against the petitioner and also ordered for recovery.

10. Learned counsel for the petitioner submits that on the basis of enquiry report dated 31.08.2019, the department vide letter no. 757 dated 20.11.2019 issued a second show cause notice. The petitioner responded to the said second show cause notice vide communication dated 09.12.2019 and rebutted each and every allegation. The detailed reply filed by the petitioner; the Director, Fisheries passed the punishment order vide office order bearing Memo No. 69 dated 22.01.2020, whereby the following punishment was inflicted:

“One recovery of an amount of Rs. 4,14,679/- (Rupees four lakhs fourteen thousand six hundred and seventy-nine) on one time basis, withholding of three increments with the cumulative effect.”

10.1. The enquiry has been conducted in the absence of



presenting officer. The enquiry officer discharged the function of the prosecuting authority and it is incumbent upon him to act fairly and impartially. The enquiry officer is not authorized to be a representative of the disciplinary authority and he cannot assume the role of prosecutor himself. The enquiry officer cannot summon documents, witnesses or evidence unless he is required for. But, in the present case, enquiry officer has assumed the role of the presenting officer, has himself produced the evidence, has himself read the evidence and he himself assumed the role of judge also. The punishment order dated 22.01.2020 is completely non-speaking and mechanical order passed by the disciplinary authority without any application of mind. The punishment order is also in teeth of the impugned order dated 19.09.2011 passed in the present case. The punishment order dated 22.01.2020 is absolutely non-speaking in as much as it does not even discuss a reply to second show cause notice filed by the petitioner on 09.12.2019 that no reason has been assigned as to why the defence statement has been rejected by the disciplinary authority. The decision of the disciplinary to recover the amount of Rs. 4,14,679/- (Rupees four lakhs fourteen thousand six hundred and seventy-nine) is also in direct violation of the impugned order in the present case. The order no. 803 dated 04.06.2012, which has been referred in the punishment order was never served upon the



petitioner. The punishment order could not be sustained mainly for the reason that is based on the enquiry report, which is contrary to the provision of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

11. Learned counsel for the petitioner has relied upon the judgment reported in *2020 (1) PLJR 185* in the case of *Lalan Kumar Sharma v. State of Bihar through the Principal Secretary, Department of Home & Ors.*, *2018 (1) PLJR 91*, in the case of *Rama Shankar Chaudhary v. State of Bihar through the Director General of Police & Ors.*, *AIR 2009 Supreme Court 1375* in the case of *Union of India & Ors. v. Prakash Kumar Tandon* and *2006 (5) SCC 88* in the case of *M.V. Bijlani v. Union of India & Ors.* and he has also relied upon the judgment / order dated 19.10.2023 passed in *Letters Patent Appeal No. 1302 of 2017* in the case of *Devendra Prasad v. The State of Bihar & Ors.* and paragraph nos. 20, 21, 22, 23, 24, 25 and 26 of the said judgment are read as follows:

“20. In the present case, but for the supply of the Vigilance Report, there is no list of witnesses or documents supplied to the delinquent employee. A translated copy of the Inquiry Report was placed before us, which is available in the records. The Inquiry Report indicates that the delinquent officer was made available the evidence by the Presenting Officer, 'by his letter no. 369 dated 28.02.2013, of the enquiry report of Project and Vigilance Department' (sic). This does not in any manner indicate that the enclosures in the Vigilance Report were supplied to



the appellant. It is also seen from the Inquiry Report that the delinquent officer was repeatedly asking for evidence, which was observed to have been made available by the Presenting Officer. The evidence made available was only the Vigilance Report, even as per the Inquiry Report. But for the Vigilance Report, there is no evidence seen to have been supplied to the delinquent employee.

21. In the Inquiry Report, the charges, the findings in the Vigilance Report as also the opinion of the Presenting Officer were noticed, but there is no reference to the examination of any witness before the Inquiry Officer or the proof of any document produced having been adduced. There are certain bills referred to in the Inquiry Report which were not produced before the Inquiry Officer. There were also references made to the various pages in a Store Book which is not seen to have been produced before the Inquiry Officer. An Inspection Report of physical verification is also referred to, without examining the person who prepared such report on physical inspection.

22. It has been consistently recorded that the show cause of the delinquent employee was not received with respect to the charges; which obviously, as argued by the learned counsel for the appellant, is due to the evidence to be led in the inquiry not having been communicated to the delinquent employee nor the same produced before the Inquiry Officer. The Inquiry Officer has also referred to the statements of many persons, attached in the statement record of the Vigilance Report; which record was neither supplied to the delinquent employee nor any of them examined as witnesses. Further, not even the officer who prepared the Vigilance Inquiry Report nor any one to establish the contents of the so-called enclosures of the Vigilance Report, was examined at the enquiry.



23. *As has been held in **Roop Singh Negi** (supra), mere production of a document is not enough and the contents of the document has to be proved by the examining witnesses.*

24. *The only witness seen to have been examined is one barber, Devanand Thakur who is said to have appeared on 20.03.2014. He spoke of asbestos-sheets kept inside the jail compound having been taken outside the jail gate which was later taken to the house of the appellant. There is nothing indicating the fact that the asbestos sheets were purchased with government funds and there is no specific charge on this count, of purchase of asbestos and appropriation of the same for personal use.*

25. *The dismissal order is dated 13.10.2015 and is produced as Annexure-14 in the writ petition which also does not discuss any evidence led at the inquiry.*

26. *We find the enquiry to be flawed beyond repair and no finding of guilt could have been held on the basis of the Vigilance Report alone. If the department or the Government was of the opinion that the allegations are inextricably connected with the Vigilance Case then they should have waited till the criminal case concluded. Having initiated a disciplinary inquiry; without proper proof being adduced, there cannot be a finding of guilt entered and a penalty imposed on that count. We find absolutely no reason to uphold the findings in the enquiry since it is without any evidence and the Disciplinary Authority also could not have found the delinquent to be guilty on the basis of either the findings in the inquiry or the evidence thereat; which we found to be totally absent.”*

12. Learned counsel for the respondents submits that there was a scheme for water harvesting and beautification of the



pond near Gurmiya Middle School for which a sum of Rs. 10,12,600/- (Rupees ten lakhs twelve thousand and six hundred) was sanctioned and technical sanction was granted for the said amount 11.01.2008. The scheme was to be completed under National Rural Employment Guarantee Scheme. The size of the pond on the spot to be renovated was 355 x 350 feet. The existing pond was three feet deep and an estimate was prepared for a seven feet deep pond. Accordingly, the amount was sanctioned. Eight schemes were selected by the Vigilance Department for technical examination by Technical Examination Cell. The measurement was taken by the Technical Examination Cell on 15.04.2011. During investigation, the shape of the pond was not found in geometrical shape as required under the scheme. The amount according to measurement was shown to be Rs. 9,60,066/- (Rupees nine lakhs sixty thousand and sixty-six). Hence, it was found that the petitioner has defalcated the rest amount and Committee has decided / recommended for realization of the defalcated amount from District Engineer namely, Shri Shishir Kumar and Junior Engineer (petitioner) and directed the petitioner to depose the said amount in equal proportion as per Technical Examination Cell report and the impugned order has been passed after due procedure of law and after giving an opportunity to the petitioner to defend his case, the petitioner was served upon a copy



of the report dated 23.05.2011 of Technical Vigilance Cell along with letter no. 4036 dated 11.07.2014 and the departmental proceeding was conducted by giving the petitioner reasonable opportunity of hearing and enquiry report dated 31.08.2019 was submitted to the disciplinary authority vide the enquiry officer affirming the charge levelled against the petitioner. The disciplinary authority has also issued a second show-cause to the petitioner along with copy of the enquiry report dated 31.08.2019 and thereafter, the petitioner has replied to the second show-cause notice on 09.12.2019 and the same was duly considered by the disciplinary authority and the same was not found satisfactory and the order of punishment was passed vide order dated 22.01.2020 and apart from that, the petitioner has not challenged the punishment order dated 22.01.2020.

13. Having regard to the submissions made by the parties, it appears that the respondent authority without giving any opportunity to the petitioner had issued a memo no. 530 dated 08.08.2011 and it appears that enquiry report dated 23.05.2011 submitted by the District Engineer, Technical Vigilance Cell, which suggests that the enquiry report was ex parte and without giving an opportunity to the petitioner, the enquiry officer has submitted the enquiry report and it appears from the enquiry report that the enquiry officer had reported about the several irregularities



in the execution of the scheme and furthermore in where the payments were quantified and action for recovery was recommended. It appears that only on the basis of the said enquiry report and the direction of the Vigilance Department, the respondent no. 2, District Magistrate, Vaishali directed the respondent no. 4, Deputy Development Commissioner, Vaishali to issue a letter for recovery of the amount and also for initiation of the departmental proceeding and it appears from the aforesaid that the enquiry report dated 23.05.2011 and the decision of the Government dated 11.06.2011 are illegal and suffer from the infringement of the principals of natural justice and in no point of time, either during the course of enquiry or during the review of the enquiry report, was the petitioner ever noticed or any explanation was called from him and the same was conducted behind the back of the petitioner and the enquiry was also done behind the back of the petitioner after lapse of three years, when the pond had already witnessed three monsoons and the life of the scheme was not more than one year.

14. In view of the aforesaid, the Memo No. 530 dated 08.08.2011, and its consequential letter no. 531 dated 08.08.2011 (Annexure-2) are hereby set aside and the petitioner is entitled for all the consequential benefits in accordance with law and the concerned respondents are directed to pay all the consequential



benefits to the petitioner within a period of eight weeks from the date / production of receipt of copy of this order.

15. Accordingly, the writ petition stands allowed.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	06.11.2023
Uploading Date	01.07.2024
Transmission Date	NA

