

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12763 of 2018

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Shardendu Bhushan Son of Sri Shivji Singh, Resident of House No. E/3 Phase-II, Ashiana Nagar, P.S.- Rajiv Nagar, District - Patna- 800001, Suspended at Assistant Engineer, Road Construction Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Kumar, Advocate Mr. Sourav Suman, Advocate Mr. Niranjana Kumar, Advocate Mr. Pragati Patra, Advocate Mr. Sarveshwar Tiwary, Advocate
For the Respondent/s	:	Mr. Manoj Kr.Ambastha, SC-26 Mr. Tripurari Nath Ambastha, AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 07-10-2024

Heard Learned Counsel for the petitioner and
Learned Counsel for the State.

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

(i) To set aside the letter contained in No.8647
dated 06.10.2017 whereby the second show cause has been
asked from petitioner.

(ii) To issue an appropriate writ/ order/direction,
directing the Respondents to stay the continuance of the



Departmental Proceeding initiated in Form-'K' dated 09.10.2015 against the petitioner till the pendency of the criminal case arising out of Special Unit Vigilance P.S. Case No.1 of 2015 pending in the Court of learned Special Judge, Vigilance-I, Patna.

(iii) To set aside the enquiry report dated 03.08.2017, which was submitted by the Enquiry Officer without affording the opportunity on conjecture and surmises.

3. Further by virtue of I.A. No.8883 of 2018 and I.A. No.2 of 2019, he has made prayer to amend his prayer which was allowed vide order dated 09.09.2024 and the challenge of notification No. 8643(s) dated 20.11.2018 by which the respondents have terminated the petitioner from service has been passed and subsequently prayer has been made to quash the order contained in notification No. 1065 (s) dated 29.01.2019 issued by the Deputy Secretary, Road Construction Department, Government of Bihar, Patna passed in review petition.

4. Learned Counsel for the petitioner submits that petitioner was appointed as Assistant Engineer in the Road Construction Department on 13.12.2007. He submits that the petitioner was a hard working employee, which is apparent from



his service record, which was throughout excellent and exceptional. He was working with full satisfaction of his seniors. Counsel for the petitioner submits that when he was working as Assistant Engineer, Road Sub-Division, Hilsa, Nalanda, an FIR, namely, Special Vigilance Unit P.S. Case No.1 of 2015 has been lodged on 30.06.2015 under Prevention of Corruption Act. Counsel submits that the allegation in the FIR has been made with regard to holding property, disproportionate to his known source of income. Counsel submits that till filing of the writ petition, sanction order has not been received. He further submits that the department has completely ignored this aspect that the criminal case is at preliminary stage but petitioner has been suspended under Section 9(i)(c) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005') vide order dated 03.08.2015, contained in Notification No.7132. By virtue of the said notification, the petitioner was put under suspension and his Headquarter was fixed in the office of the Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna. Counsel submits that vide Memo No.9629(s) dated 09.10.2015, a Departmental Enquiry had been initiated against the petitioner



and the Charge Memo dated 09.10.2015 was served. Counsel submits that in 'Prapatra-Ka' two charges have been alleged against him. Learned Counsel further submits that the Enquiry Officer was appointed and the petitioner had appeared before the Enquiry Officer and finally on the basis of the said Charge Memo the Enquiry Officer had pleased to pass order on 20.11.2015 (Annexure-8) by which he ordered indicating that the Disciplinary Authority had not demanded any written statement and prior to that matter was referred for enquiry, therefore, he had put query from the department that whether this action be legal or not. Counsel further submits that on 04.12.2015, the Enquiry Authority had passed another order, by which he had returned back the entire documents relating to the Disciplinary Proceedings, to the department to seek direction from the Disciplinary Authority to proceed in the Departmental Proceeding.

5. Learned Counsel further submits that thereafter the department thereafter issued a letter dated 06.01.2016 by which a show-cause has been directed to be submitted from petitioner within seven days and 'Prapatra-Ka' has been annexed with the said letter dated 06.01.2016. Counsel for the petitioner further submits that vide Memo



No.203 dated 09.05.2019 on same charge memo, the Disciplinary Authority had appointed another Enquiry Officer to conduct the disciplinary proceeding, referred the matter before him, who had conducted the proceeding and found charge proved, then sent back matter to the Disciplinary Authority. The said Disciplinary Authority demanded 2nd show cause and had passed order dated 20.11.2018 contained in Notification No.8643(s). Counsel submits that from the said order it has been indicated that second show-cause has been demanded from the petitioner on which he also responded. Counsel further submits that the said order has been challenged in Review and final order has been passed by the Reviewing Authority contained in notification No.1065(s) dated 29.01.2019 by which the punishment order from removal of service has been affirmed by the Reviewing Authority.

6. Learned Counsel for the petitioner submits that in conducting the disciplinary proceeding gross violation of the Established Rule has been made by the Disciplinary Authority and due to this reason, the defect, has been pointed out by the earlier Disciplinary Authority in its two orders dated 20.11.2015 and finally in 04.12.2015. But the said defects, have not been ratified by the disciplinary authority and, therefore,



any further proceeding without ratifying those defects pointed out by the Enquiry Authority shall vitiate the entire future proceeding at all. Counsel submits that there is gross violation of Rule 17(4) of the CCA Rules, 2005 in the present proceeding. Counsel submits that since the departmental proceeding on which clear cut finding has come by the Enquiry Officer that this proceeding is not legal then in that case the Disciplinary Authority ought to initiate the proceeding afresh completely, in accordance with law, but those facts had completely been ignored by the Disciplinary Authority and instead thereof another Enquiry Authority had been appointed who had conducted the proceeding and imposed punishment. He submits that a defective disciplinary proceeding has been resulted in the punishment may be treated as illegal and subsequently approved in review may also be treated as illegal.

7. Learned Counsel for the State, on the other hand, submits that the order passed by the subsequent Enquiry Authority is completely in accordance with law. Learned Counsel for the State submits that it is true that the earlier Enquiry Authority has returned back the disciplinary proceeding to the Disciplinary Authority directing to take decision afresh and in this regard letter No.53(s) dated 06.01.2016 had been



issued to the petitioner demanding the show-cause within seven days and in this way the compliance of Rule 17(4) of the CCA Rules, 2005 has been made and only thereafter the Disciplinary Authority vide its order dated 03.05.2017 contained in Memo No.203 dated 09.05.2017 has appointed fresh Enquiry Authority. Enquiry Authority has taken into consideration the entire process and submitted enquiry report as all charges proved against the petitioner. Disciplinary Authority thereafter issued second show-cause upon the petitioner and then, after providing opportunity of second show-cause passed final order of punishment, which was subsequently challenged by the petitioner in Review in which the order of punishment has been approved. According to him, there is absolutely no procedural mistake as the demand of written statement has been ratified by letter No.53 dated 06.01.2016. Counsel submits that from Annexure-11, which has been filed by the petitioner before the Disciplinary Authority, it is clear that he has filed written statement prior to initiation of the fresh enquiry. As such, Counsel submits that there is absolutely no illegality or irregularity in the proceeding.

8. After hearing the parties and upon perusal of the documents, it transpires to this Court that admittedly, charge



memo has been issued to the petitioner on 09.10.2015, which is Annexure-1 'Prapatra-Ka' and upon perusal of Annexure-1 it also transpires to this Court that decision to initiate the disciplinary proceeding has been made without demand of written statement and, therefore, the decision of the Enquiry Authority dated 02.11.2015 and 04.12.2015 had been passed well and completely in accordance with law, because law is very clear that a written statement of his defence has to be considered by the Disciplinary Authority which has not been done. Therefore, this Court appreciates the decision of the earlier Enquiry Authority that he has taken such decision, and referred the matter before the Disciplinary Authority to consider afresh. It is also clear that considering the objection made by the Enquiry Authority, a letter has been issued from the department demanding clarification from petitioner vide letter No.53(s) dated 06.01.2016 and which has also been answered by the petitioner. Therefore, compliance of demanding written statement has also been fulfilled, but in the opinion of the Court, the clarification/written statement has not been taken into consideration by the Disciplinary Authority and again on the basis of same 'Prapatra-Ka' dated 09.10.2015 which has been attached but no finding on the written statement is the



mistake done by him and, therefore, this Court cannot ignore the said procedural mistake done in the Disciplinary Proceeding as Rules 17(3), 17(4) and 17(5) of the CCA Rules, 2005 are very much clear, in which it is clearly indicated that the Disciplinary Proceeding shall demand written statement from the delinquent and upon receipt of the written statement of defence, the Disciplinary Authority may himself inquire into such article of the charge which are not admitted or if it thinks necessary to appoint an Enquiry Officer for the purpose, he may do so in his written statement of defence and, then, only Disciplinary Authority has to appoint Enquiry Authority for holding an enquiry for such charge and shall also appoint a Presenting Officer in this matter. Further the disciplinary authority has to send the records to the Enquiry Authority.

9. It transpires to this Court upon perusal of the documents that it is true that clarification has been demanded (though clarification/written statement are two different aspect of the matter in law but in departmental proceeding even if, for a sake of argument, it has been ignored that demand of clarification/ written statement may be same thing), even then the Disciplinary Authority has to apply his independent mind to proceed in the enquiry by Inquiring Authority or not, which is



lacking in the present case. As even after acceptance of the clarification/written statement same ‘Prapatra-Ka’, which was defective as indicated in the earlier Enquiry Authority dated 09.10.2015 has been issued.

10. As such, this Court is hereby interfering in the proceedings and, therefore, the entire proceedings conducted by the second Enquiry Authority, its result and subsequently review order all are hereby set aside. Hence, all orders contained in Notification No.8643(s) dated 20.11.2018 (Annexure-16) and Notification No.1065(s) dated 29.01.2019 (Annexure-19) issued by the Deputy Secretary (Vigilance), Road Construction Department, Government of Bihar, Patna, are set aside. The department is free to take action afresh, if cause of action still survives against the petitioner. But, the fresh proceeding if initiated, it is directed to be concluded within 6 months from the date of production of this order before the Disciplinary Authority.

11. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2024
Transmission Date	NA

