

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8084 of 2021

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Bhim Shankar Rai, Son of Late Ram Nath Rai, resident of flat No. 402, Bhubneshwar Enclave, 90 feet Road, Krishi Nagar, Ashiyana Nagar, P.O. - Ashiyana Nagar, P.S. - Shastri Nagar, District- Patna- 800025, retired Executive Engineer, Bagmati Division No. 1, Sitamarhi under the Water Resource Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Water Resource, Government of Bihar, Patna.
2. The Additional Secretary, Water Resource Department, Government of Bihar, Patna.
3. The Joint Secretary, Water Resource Department, Government of Bihar, Patna.
4. The Engineer - in - Chief, Water Resource Department, Government of Bihar, Patna.
5. The Chief Engineer, Flood Control and Drainage, Water Resource Department, Muzaffarpur.
6. The Superintending Engineer, Flood Control and Drainage Sitamarhi.
7. The Executive Engineer, Bagmati Division, Sitamarhi.
8. The Treasury Officer, Sinchai Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Shrivastava, Sr. Advocate Mr. Amaresh Kumar Sinha, Advocate Mr. Kumar Prabhakar, Advocate
For the Respondent/s	:	Mr. Sudhanshu Bhushan, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 15-04-2025

Heard Mr. Abhinav Shrivastava, learned Senior Advocate for the petitioner and Mr. Sudhanshu Bhushan, learned Advocate for the State.

2. The challenge in the present writ petition is made



to a notification, as contained in Memo No. 903 dated 07.05.2019, issued under the signature of Additional Secretary, Department of Water Resources, Government of Bihar, whereby the petitioner has been inflicted with the punishment of stoppage of permanent pension in a departmental proceeding.

3. The inevitable facts, as available on record, which are necessary for adjudication are summarized hereinbelow:

(i) The petitioner was duly appointed as Assistant Engineer in the department of Water Resources in the year 1979. After serving the department at different places in different capacities, the petitioner was promoted to the post of Executive Engineer in the year 2009 and finally superannuated as Executive Engineer, Bagmati Division No.1, Water Resources Department, Sitamarhi on 31.01.2014.

(ii) On being superannuated, all the retiral benefits were disbursed to the petitioner and the final pension has also been released in his favour. In the meanwhile, on a complaint filed by one Nawal Kishore Roy, Ex-parliamentarian, in relation to certain irregularities, a Vigilance enquiry was initiated after a year of the superannuation of the petitioner. In the Vigilance enquiry, the petitioner along with some of the officers found



responsible for irregularities, leading to irregular excess payment to the contractor, resulting into issuance of show-cause notice seeking explanation vide letter no. 2385 dated 16.10.2015 under the signature of Special Works Officer.

(iii) The petitioner in response thereto sent a letter dated 29.02.2016 to the Special Works Officer stating therein that in absence of documents relating to the work on Adhawara Group of rivers, it is not possible to submit explanation. The petitioner prayed for photo copies of the complete report of the Vigilance enquiry and also the necessary record of Bagmati Division-I. The department sent a reminder to the petitioner, which was again responded by the petitioner vide letter dated 14.03.2016 and clarified that on being superannuated he has no access to any of the documents and in absence thereof he is facing difficulty to submit his explanation and thus he asked for necessary documents required for the purpose.

(iv) Vide Memo No.1521 dated 27.07.2016, a Memo of Charge in (प्रपत्र 'क') was issued by the department. An enquiry officer and presenting officer were also appointed for the departmental proceeding; the petitioner was further asked to present himself before the enquiry officer to present his defence. In continuation of the aforesaid memo the enquiry officer vide



letter, bearing no. 117 dated 27.07.2016 intimated the petitioner to appear before him on 03.08.2016. On receipt of Memo of charge, aforementioned, the petitioner immediately sent a letter on 31.07.2016 that no such information has been given to him by the Department with respect to the appointment of the conducting officer and the presenting officer, the copy of such letter was also sent to the Principal Secretary, Water Resources Department with a request that a senior technical person should be appointed as the enquiry officer in order to conduct enquiry to appreciate the technicalities in the matter.

(v) The conducting officer vide his letter dated 26.10.2016 informed the petitioner fixing the date of enquiry on 09.11.2016 with a note that the petitioner had been absent in several past hearing and not cooperating in the departmental proceedings, hence the petitioner is directed to ensure his physical presence with witnesses to offer his defence, failing which the ex parte decision shall be taken in the proceeding.

(vi) The petitioner appeared in person on 09.11.2016 and refuted the contention of the conducting officer regarding his absence on any of the dates. Request has also been made for supply of necessary papers/documents. Apart from the aforesaid facts, in the meanwhile, some correspondences have



also been made, which was duly replied by the petitioner. Subsequently the enquiry officer vide Memo no. 255 dated 01.08.2017 stated that the petitioner was informed that final hearing in the departmental proceeding was fixed on 01.08.2017 at the request of the petitioner himself, yet he remained absent and thus it is evident that the petitioner has nothing to say in the matter. The aforesaid letter has been responded by the wife of the petitioner vide letter dated 07.08.2017 informing the conducting officer that the petitioner got arrested on 22.07.2017 in connection with the case of Adhawara group of rivers and thus he could not attend the departmental proceeding on 01.08.2017.

(vii) The petitioner in the meantime, received second show-cause notice issued vide letter, bearing no. 738 dated 26.05.2017 under the signature of Joint Secretary of the Department along with the enquiry report. The said letter specified that the enquiry officer in his enquiry report has held all charges against the petitioner as proved. Agreeing with the report of the enquiry officer, the second show-cause notice was issued directing the petitioner to submit his reply within a fortnight. The petitioner submitted his reply to the show-cause notice and prayed for rejection of the enquiry report on various



grounds. The petitioner also brought into light the factual material, thereby negating the correctness of the findings of the enquiry report; and thus prayed for exoneration from all the charges. The petitioner was finally served with the notification, bearing no.903 dated 07.05.2019 and the pension of the petitioner to the extent of 100% stands withheld.

4. Mr. Abhinav Shrivastava, learned Senior Advocate for the petitioner while assailing the order impugned has contended that the action of the respondent authorities in withholding 100% pension is patently arbitrary, illegal and unjust. The departmental proceeding was conducted in gross violation of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005'), as also in violation of the principles of natural justice and in complete transgression of the mandate of the Hon'ble Supreme Court in this regard. The enquiry conducted in the departmental proceeding was no enquiry in the eyes of law and moreover the finding of the enquiry officer is wholly perverse, inasmuch as even though there was no evidence led in the proceeding by the presenting officer or by the department, the charges have been held proved. Having taken this Court through the impugned order, learned Senior Advocate vehemently contended that the disciplinary authority failed to consider any of the points raised by the petitioner in his reply to the



second show-cause. The order passed by the disciplinary authority is cryptic and non-speaking.

5. To buttress the aforementioned submission, learned Senior Advocate has referred the relevant prescriptions of CCA Rules, 2005. Referring to Rule 3, 4 and 5 of the CCA Rules, 2005, it is urged that where the disciplinary authority proposed to hold an inquiry against a government servant. Apart from the substance of the imputations of misconduct or misbehaviour, it must be definite and distinct. A list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained must be the part of the memo of charge. After submission of the memo of charge with the aforementioned document and the list of witnesses, the Government servant is under obligation to submit written statement of his defence and state that whether he desires to be heard in person or not. On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so, however, it is incumbent upon the disciplinary authority to record his findings on each charge after taking such evidence as it may think fit and thereupon action may be taken in the manner laid down in Rule



18 of the CCA Rules, 2005.

6. Adverting to the aforesaid legal position, it is submitted that issuance of the memo of charge and appointment of the enquiry officer as well as presenting officer with the same letter and thereby allowing the enquiry officer to issue letter intimating the petitioner to appear before him on a specified date clearly transgress the aforesaid settled position inasmuch as the petitioner has been deprived from filing written statement before the disciplinary authority, who was under obligation to give its finding. It is also surprising that the memo of charge was signed on 27.07.2016 and on the same date the enquiry officer vide its letter dated 27.07.2016 intimated the petitioner to appear. The request of the petitioner to furnish the necessary and relevant documents has never been acceded to knowing very well that the petitioner is no more in service upon being superannuated. The malafide is writ large from the reading of the enquiry report as well as the facts that the petitioner was informed to participate in the final hearing in the departmental proceeding on 01.08.2017, but surprisingly the second show-cause notice issued vide letter no. 738 dated 26.05.2017 along with the enquiry report was served to the petitioner specifying therein that all the charges against the petitioner stands proved.



The enquiry report, the copy of which is marked as Annexure-15 Series, clearly suggests that neither the petitioner participated in the enquiry nor he placed his point in his defence and thus it appears that the petitioner has nothing to say, hence all the charges found proved. The enquiry officer failed to act as an independent arbitrator, the prejudice mind of the enquiry officer also reveals that he disclosed the petitioner as a kingpin of irregularities involving a huge public exchequer.

7. Taking this Court through the impugned order, learned Senior Advocate for the petitioner further contended that it referred to various letters issued by the Chief Engineer, Muzaffarpur, but the same has never been served upon the petitioner. There is no deliberation and discussion of the reply to the second show-cause and it is said that the petitioner has only placed irrelevant facts without there being any evidence, which has no bearing over the framed charges. The petitioner has been found to be main conspirator of the irregularities, leading to excess payment to the contractor of more than 3-4 crores.

8. On the aforesaid settled legal position and the infirmities pointed hereinabove, learned Senior Advocate submitted that the impugned order is unsustainable in law as well as on fact and the same is fit to be quashed and cancelled.



9. Refuting the aforementioned contentions, Mr. Sudhanshu Bhushan, learned Advocate for the State has submitted that during the period 2012-14, while the petitioner was posted as Executive Engineer, Bagmati Division No.1, Sitamarhi in connection with 'Raising and Strengthening Work' of left and right embankment of main river of Adhwara group was executed in the said division. Some complaints were lodged in the Vigilance Department alleging irregularity and misappropriation of public money, leading to preliminary enquiry by the Vigilance Department. On being found allegation to be true, the Vigilance Department submitted its report and recommended for taking appropriate action. On being found responsible, explanation was sought for from the petitioner, but he did not file any response and since the petitioner had already superannuated on 31.01.2014, it was decided to initiate a proceeding under Rule 43(b) of the Bihar Pension Rules. Distinct and definite charges were framed, the copy of which was duly communicated to the petitioner and so far the request of the petitioner to furnish certain documents, the same has been communicated to the Executive Engineer with a direction to make available those documents to the petitioner.

10. From the materials available on record, it



appears that the petitioner did not cooperate in the departmental proceeding, despite the letters and the reminders and thus the enquiry officer submitted the enquiry report, which also talks about the evasive attitude of the petitioner, moreover the petitioner held guilty of the charges.

11. The second show-cause notice along with the copy of the enquiry report has been served upon the petitioner in due observance of the principles of natural justice and on being found all the seventeen charges stand proved and the impugned punishment order has been issued after getting a concurrence from the Bihar Public Service Commission, Patna.

12. In sum and substance, learned Advocate for the State submitted that there is no manifest irregularity and illegality in conducting the disciplinary proceeding, which led to passing of the impugned order. It has also been pointed out that the petitioner has also earlier approached by filing C.W.J.C. No.14093 of 2018 seeking quashing of the memo of charge as well as enquiry report and the entire departmental proceeding, which is still pending for adjudication.

13. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocate for the respective parties and also meticulously perused the



materials available on record.

14. Prima facie, on perusal of the Memo of charge, this Court finds that it does not contain the list of witnesses to be examined by the department and the same has been issued based upon the Vigilance report wherein the imputations levelled against the petitioner stand substantiated. Indubitably, the preliminary enquiry is for the purpose of collection of facts with the conduct of a Government servant; in order to come to a conclusion whether the departmental proceeding ought to be initiated against the delinquent or not. However, neither the author of the preliminary enquiry report nor any of the witnesses have been examined by the department to prove the charges. The statutory prescriptions under Rule 17(3) of the CCA Rules, 2005 read with Rule 3 of the Bihar Framing of Articles of Charge against government servants Regulations, 2017 mandate the memo of charge must contain list of witnesses.

15. The instant issue was duly considered by a Coordinate Bench of this Court in the case of *Ashwini Kumar Vs. The State of Bihar & Ors.*, reported in *2017 (3) PLJR 500* wherein the Court has categorically observed that charge-sheet itself dehors the statutory prescriptions for until such time that a list of witness accompanies a charge-sheet. The documents



relied upon by the department suo motu cannot be simply relied upon for proving a charge as held by the Supreme Court in the Case of **Roop Singh Negi Vs. Punjab National Bank**, reported in **(2009) 2 SCC 570**, the Court has emphasized that it is mandatorily requires the disciplinary authority not only to give a list of documents on which the charges are founded but also give a list of such witness by whom, the article of charges are to be proved. It would be also worth encapsulating the relevant observations of the Hon'ble Supreme Court in the case of **Roop Singh Negi** (supra).

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as



evidence.”

16. It is trite law that a person, who is required to answer a charge imposed should know not only the accusation, but also the testimony by which the accusation is supported and, as such, the delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses and in absence thereof the principles of natural justice would be violated warranting interference in the enquiry report. It would be apt and proper to encapsulate the relevant observation of the Hon'ble Supreme Court in the case of ***Brij Bihari Singh Vs. Bihar State Financial Corpn. And Ors.***, reported in (2015) 17 SCC 541.

“9. It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also



conjecture and surmises, it cannot be sustained in law.”

17. Now coming to the duties of the enquiry officer, as painstakingly highlighted by the Hon'ble Supreme Court in the case of ***State of U.P. and Ors. Vs. Saroj Kumar Sinha***, reported in (2010) 2 SCC 772. It is needless to observe that an enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. He must be wholly unbiased and must not act as a prosecutor as well as a judge. The Court has cautioned that when a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. It would be benefiting to quote the relevant paragraphs of the judgment in order to appreciate the facts and the issue involved in the present writ petition.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the



unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.



18. In the case in hand, it is admitted fact that the departmental proceeding has been initiated after one and half years of the superannuation of the petitioner, hence in any of the circumstances he is entitled to be afforded reasonable opportunity to meet the charges against him in an effective manner. The Hon'ble Supreme Court in *Kashinath Dikshita Vs. Union of India and Ors.*, reported in *(1986) 3 SCC 229* had crystallized the issue of rationality for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant. The Hon'ble Supreme Court held that no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements/documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible?

19. Now coming to the issue of mala fide raised by the learned Senior Advocate for the petitioner, referring to the enquiry report vis-a-vis the facts that at one hand the petitioner has been intimated the date for final hearing on 01.08.2017, on the other hand, the petitioner has been served with the second



show-cause notice along with the enquiry report under letter no. 738 dated 26.05.2017, this fact is enough to accept the contention of the petitioner. The enquiry report also suggests that only on account of the fact that the petitioner failed to actively participate in the departmental proceeding and did not place his point, hence all the charges stood proved also does not inspire confidence of this Court.

20. This Court also finds fault in the enquiry report, which concerned with only seven of the charges, notwithstanding the fact that the memo of charge contains seventeen distinct charges, which is also admitted by the disciplinary authority while passing the impugned order. How the enquiry officer reached to the conclusion that the charges stood proved is also missing. For all the aforementioned reasons, this Court finds the enquiry officer failed to perform his duty, as has been ruled by the Hon'ble Supreme Court time to time as also discussed hereinabove.

21. Now coming to the impugned order inflicting punishment of withholding of entire pension, this Court, prima facie, finds that the disciplinary authority has diligently recorded all the imputations of charges and the contents of the enquiry report, but failed to deliberate and discuss the grounds



taken in the reply to the second show-cause filed by the petitioner. It was, often for a while it is, accepted that the petitioner failed to actively cooperate in the departmental proceeding and filed exhaustive explanation, in such a situation, the disciplinary authority ought to be more cautious and vigilant while dealing with the reply to the second show-cause. The copy of the reply to the second show-cause is placed on record, as contained in Annexure-P/16; each and every charges and the finding of the enquiry officer has not only been refuted, but also answered and explained as to how it do not get substantiated. The disciplinary authority while passing the impugned order has taken note of several letters written by the then Chief Engineer, Muzaffarpur, but the fact has not been refuted that these letters have never been served upon the petitioner. The disciplinary authority very conveniently came to the position that all the seventeen charges stand proved, irrespective of the fact that the enquiry report confined to only seven charges. It is further observed by the disciplinary authority that in response to the second show-cause, the petitioner has neither placed any facts in relation to the charges nor any evidence; only in order to mislead the department irrelevant facts have been placed and thus he came to the conclusion that the petitioner is main



conspirator of the irregularity leading to irregular and excess payment. The order passed by the disciplinary authority has got no legs to stand for the simple reason that the same is not based and supported by any legal and cogent evidence.

22. Any order inflicting punishment or causing prejudice to the right and entitlement of a delinquent must display complete application of mind to the grounds mentioned in the show-cause notice, the defence taken in reply, followed by at least a brief analysis of the defence supported by reasons why it was not acceptable.

23. The learned Division Bench of this Court in the case of *Kems Services Private Limited Vs. The State of Bihar & Ors.*, reported in *2014 (1) PLJR 622* has observed that “the cause shown can be cursorily rejected in one line by saying that it was not satisfactory or acceptable in our opinion shall be vesting completely arbitrary and uncanalised powers in the authority. In a given situation if the authority concerned finds the cause shown to be difficult to deal and reject, it shall be very convenient for him not to discuss the matter and reject it by simply stating that it was not acceptable. The giving of reasons in such a situation is an absolute imperative and a facet of natural justice. Reasons have been held to be the heart and soul



of an order giving insight to the mind of the maker of the order, and that he considered all relevant aspect and eschewed irrelevant aspects.”

24. In view of the discussions made hereinabove within the four corner of the settled law, this Court has no hesitation to hold the impugned order is wholly unsustainable and fit to be quashed and cancelled. Accordingly the notification contained in Memo No. 903 dated 07.05.2019, stands set aside; The consequences shall follow.

25 Pending application(s), if any, shall also stand(s) disposed of.

26. The writ petition is hereby allowed. There shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2025
Transmission Date	NA

