

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3837 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 Addl. Secretary-cum- Director Land Acquisition Rehabilitation, W.R.D., Govt. of Bihar, Patna.
4. The Chief Engineer Water Resources Department, Muzaffarpur.
5. The Deputy Secretary-cum- Deputy Director, Land Acquisition and Rehabilitation, W.R.D. Govt. of Bihar, Patna.
6. The Executive Engineer (Design Division), Ratwara, Muzaffarpur W.R.D., District- Muzaffarpur.
7. The Deputy Development Commissioner, Muzaffarpur.
8. The Accountant General Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate
		Mrs. Shally Kumari, Advocate
For the Respondent/s	:	Mr. Venkatesh Kirti, Advocate
For the A.G., Bihar	:	Mr. Raj Nandan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 18-06-2025

Heard Mr. Siya Ram Shahi, learned Advocate for the petitioner and Mr. Venkatesh Kirti, learned Advocate for the State. The Accountant General, Bihar is represented through Mr. Raj Nandan Prasad, learned Advocate.

2. The challenge in the present writ petition is made to the order no. 12, dated 15.01.2019 passed by the Additional Chief Secretary, Water Resources Department, Government of



Bihar, Patna whereby the appeal preferred by the petitioner came to be allowed partly and 50% of his pension has been withheld in the proceeding under Rule 43(b) of the Bihar Pension Rules, 1950, modifying the order of punishment contained in order no. 50 dated 24.05.2017, whereby the petitioner has been inflicted with the punishment of 100% of withholding of pension. The petitioner hereby further sought a direction upon the respondents to sanction and pay the remaining 50% of his pension forthwith after setting aside both the impugned orders.

3. The short facts, which led to the filing of the present writ petition, are that while the petitioner was posted as '*Mapak*' in the erstwhile Special Land Acquisition Office, Gandak Project, Muzaffarpur; during the period 2009-14, a huge chunk of land and structures made thereon, were acquired for the construction of Bagmati embankment. On complaint being made regarding alleged defalcation committed during the period aforesaid, the records of the land acquisition proceedings were examined and enquired into by Three Men Committee constituted by the Water Resources Department. Upon completion of enquiry, the Committee submitted its enquiry report vide letter no. 2 dated 18.08.2015. Connivance of the



various officers, including the petitioner was found in making illegal payment of Rs. 5,33,18,549/- to the different raiyats fraudulently and by committing forgery and manipulation in the record of L.A. Case No. 03/2007-08, 04/2008-09 and 19/2008-09.

4. Based upon the aforesaid enquiry report, an explanation was sought for vide letter no. 1771 dated 12.10.2015 by the Director, Land Acquisition and Rehabilitation, Water Resources Department. The petitioner in response thereto, submitted his detailed explanation; on being found it unsatisfactory, the respondent took a decision to initiate a departmental proceeding. Accordingly a memo of charge was communicated to the petitioner by the conducting officer vide letter no. 434 dated 03.08.2016 with a direction to submit his reply on or before 16.08.2016. It would be pertinent to observe here that with respect to the aforesaid charges, two FIR(s) bearing Aurai P.S. Case No. 256 of 2014 and Sadar (Muzaffarpur) P.S. Case No. 503 of 2016 also came to be lodged against various officers/persons, including the petitioner.

5. In the meanwhile, the petitioner superannuated from the post of Amin, Land Acquisition Office, Sone Project, Aurangabad on 30.11.2016. Thus, the on-going departmental



proceeding was converted into proceeding under Rule 43(b) of the Bihar Pension Rules, 1950. The enquiry officer on completion of the enquiry, submitted the enquiry report vide letter no. 43 dated 27.01.2017 holding the charge nos. 1 and 3 proved; and exonerated the petitioner from charge no. 2.

6. On receipt of the enquiry report, second show cause notice was issued to the petitioner vide letter dated 27.02.2017 enclosing a copy of the enquiry report. The petitioner submitted his reply, which was found not satisfactory and the order of punishment withholding full pension of the petitioner came to be passed vide office order contained in memo no. 796 dated 24.05.2017 (Annexure 10) by the respondent no. 3.

7. Aggrieved with the order of punishment, the petitioner preferred an appeal, however, the same also did not find any favour and came to be dismissed vide order contained in memo no. 161 dated 02.02.2018 (Annexure 12).

8. Both these orders were put to challenge by the petitioner in C.W.J.C. No. 6918 of 2018. A bench of this court vide order dated 02.02.2018 set aside the order passed in appeal and relegated the matter to the Appellate Authority, to pass fresh order after giving reason and affording hearing to the parties. In compliance therewith, the matter was heard afresh by the



appellate authority and finally the order of punishment dated 24.05.2017 was modified by the Appellate Authority and the punishment of withholding of 100% pension was reduced to 50% vide order no. 12 as contained in memo no. 87 dated 15.01.2019.

9. While assailing the impugned orders, Mr. Siya Ram Shahi, learned Advocate for the petitioner contended that the entire departmental proceeding against the petitioner has been conducted in a very perfunctory manner, inasmuch as, the statutory prescriptions as provided under Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as Rules, 2005) have been given a complete go-by.

10. Taking this Court through the enquiry report dated 25.11.2017, it is submitted that no reason whatsoever has been assigned, which compelled the Conducting Officer to hold the charges proved. The conducting officer while holding the charge no. 1 proved, has observed that on 15.10.2016 the presenting officer has produced the record of Land Acquisition Case No. 03/2007-08 in relation to village Basant, where three of the awardees have been paid the amount on the basis of report of the petitioner. However, the fact is otherwise; the petitioner has only



verified the documents of the awardee on notice under Section 12(2) of the Land Acquisition Act. Neither he had signed any voucher on the basis of which payment was effected nor it is the case of the department that the awardee has got payment on forged document. Similarly, so far as charge no. 3 is concerned, the finding of the conducting officer is based upon no reason and without discussing the materials on the record.

11. It is submitted that so far payment of Jitendra Sharma against Khesra No. 1555 is concerned, it is based upon the letter no. 865 dated 01.08.2013 written by the Executive Engineer, Runnisaidpur. He has only signed on the application after verification of the documents relating to land of Khesra No. 1555.

12. It is further contended that moreover, the Three Men Committee report with respect to charge no. 3, the name of the petitioner did not find place; hence the adverse finding of the conducting officer with respect to the said charge is unsustainable. The disciplinary as well as the appellate authority, while passing the impugned orders have neither taken into consideration the important aspect of the matter that at no stage of land acquisition, the petitioner was party to the payment nor he is signatory to any voucher and being a *Mapak* and



further In-charge Kanoongo, he only verified the documents with the land records.

13. To support the challenge, reliance has also been made to a decision rendered by the Apex Court in the case of ***Union of India & Ors. vs. Gyan Chand Chattar, (2009) 12 SCC 78*** specially on paragraph 32 thereof wherein the Court held that :-

“it is not permissible to hold an enquiry on a vague charge as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof.”

14. Further reliance has been placed on a decision rendered by a Bench of this Court in the case of ***Girish Prasad Sah vs. The State of Bihar & Ors., (2018) 1 PLJR 144***, wherein the learned Court held that *the role of Disciplinary Authority, Presenting Officer and Enquiry Officer is very clearly explained in the rule, thus, holding of disciplinary proceeding is not a routine matter, rather a stigma is attached to the officer concerned which requires to be driven home in the manner provided under Rules and not by getting swayed on the allegation.*



15. On the other hand, Mr. Venkatesh kirti, learned advocate for the state refuting the aforementioned contention, submitted that preliminary enquiry conducted by three men committee has come to the conclusion of connivance of the petitioner with raiyats and thereby making illegal payment of rs. 5,33,18,549/- with the help of other officers of Water Resources Department.

16. The petitioner who was holding the post of *Mapak* and In-charge Kanoongo, during the period in question was duly authorized to verify the documents of the raiyats with the available record after proper inspection, but instead of making any objection with regard to illegal claim of the raiyat holders, the petitioner recommended for excess payment to the awardee by making manipulation in the record. It is further submitted that the petitioner was put to place in a full-fledged departmental proceeding after furnishing a memo of charge containing distinct imputation. The charges levelled against the petitioner stood proved, which established that the petitioner was involved in causing financial loss of Rs. 30,51,399/- to public exchequer by making twice payment to the awardees through supplementary awards and change in the nature of land in the records. The order of the disciplinary authority was duly



considered and on being found the limited role of the petitioner *vis-a-vis* the charges proved, the Appellate Authority has modified the original order of punishment of withholding of entire pension to withholding of 50% of pension. There is no procedural infirmity and any illegality in the impugned order which requires interference.

17. This Court has given anxious consideration to the submissions advanced on behalf of learned Advocate for the respective parties and also perused the materials available on record.

18. Exercising the power of judicial review, the Courts have been reminded on innumerable occasions that the scope of judicial review is limited to the deficiency in the decision making process and not the decision. Caution has been made that the Court would not go into the correctness of the choice made by the Administrator/competent authority open to him and the Court should not substitute its decision to that of the Administrator/Disciplinary Authority. As regards the power of the High Court to re-appreciate the facts, it cannot be said that the same is completely impermissible under Article 226 and 227 of the Constitution of India, however, there must be a level of infirmity, greater than ordinary, in a Tribunal order which is



facing judicial scrutiny before the High Court, to justify interference as has been held by the Apex Court in the case of ***Bharti Airtel Limited vs. A.S. Raghavendra, (2024) 6 SCC 418***. The aforesaid proposition has been summarized by reiterating the settled legal position as has been held in the case of ***State of Andhra Pradesh & Ors. vs. S. Sree Rama Rao, AIR 1963 SC 1723, State of Andhra Pradesh & Ors. vs. Chitra Venkata Rao, (1975) 2 SCC 557*** and ***State Bank of Patiala & Ors. vs. S.K. Sharma, (1996) 3 SCC 364***. The Apex Court has further crystallized that in a case where a fair opportunity was given to the delinquent to present his version on account of minor deficiencies in the process, if the same has not caused prejudice to the respondents to the extent warranting judicial interdiction and the charges was proved based upon legal evidence, the order of punishment should not interfere normally.

19. Coming to the case in hand, the facts which are admitted to the extent is that a departmental proceeding came to be initiated under rule 17 of the Rules, 2005. Rule 17 of the CCA Rules, 2005 cast an obligation upon the disciplinary authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. It is specifically ruled that substance of imputation of



misconduct or misbehavior has definite and distinct article of charge. To support each of the charge(s), the statement of all relevant charge, including a list of such document by which and a list of such witnesses by whom the article of charge is sustained. Rule 17 thereof mandates the delivery of such charge memo so drawn up either through the disciplinary authority or through an officer duly authorized, the obligation cast on the disciplinary authority has further mandated him to satisfy himself whether the explanation so forwarded by the delinquent on the proposed charge requires an enquiry by the enquiry officer or requires a closure.

20. A Bench of this Court in the case of *Shankar Dayal vs. State of Bihar & Ors., (2018) 2 PLJR 308* while emphasizing the provisions of Rule 17(4) has ruled that this power is exclusively vested in the disciplinary authority under Rule 17(4) cannot be delegated. This Court found that this mandatory obligation cast on a disciplinary authority has been flouted as confirmed from the letter issued by the enquiry officer directing the petitioner to file his reply on the charges before him. There is no satisfaction of the disciplinary authority which necessitated initiation of a disciplinary proceeding and in fact there is gross violation of the statutory rules at every stage



of the proceeding.

21. Now coming to the memo of charge, admittedly there is complete infraction of the prescriptions as provided under rules 17(3) and 17(4) which obligate the disciplinary authority to provide a list of documents and witnesses by which each article of charge is proposed to be sustained. There is complete absence of the list of witnesses by whom the article of charge are proposed to be sustained. It is the admitted position that the Presenting Officer has failed to produce any witness to prove the charges. The Hon'ble Supreme Court has emphasisingly held in no uncertain terms that mere tendering of documents does not prove the contents thereof.

22. The Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors., (2009) 2 SCC 570***, has held that a departmental proceeding is a quasi-judicial proceeding and 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 the accused by itself could not be treated to be evidence in the disciplinary proceeding. The Court further observed that



since no witness was examined to prove the said documents and only the witnesses tendered the documents, the contents thereof could not be proved. Any reliance placed by the officer over any of the document, the contents of which have not been proved, could not be treated as admissible evidence.

23. Similar view has been reiterated and emphasized in the case of *State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha, (2010) 2 SCC 772*, wherein the Apex Court has ruled that 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 delinquent.

24. Admittedly in the case in hand, no witness was examined to prove the contents of the documents which is utmost required in a case where the delinquent has confronted all the charges in tooth and nail. This Court has also gone through the defence statement of the petitioner, as responded to the imputation levelled in the memo of charge, but to utter disappointment to this Court, the manner in which it was considered and answered by the enquiry officer before returning his finding to hold the charges proved, clearly lacks application of mind and thus perfunctory.



25. Out of three charges, charges no. 1 and 3 stood proved only taking into account of the record relating to L.A. Case No. 03/2007-08, which reflect that preceding to the award, the petitioner has put his signature on the recommendation report and further in respect to charge no. 3, the record of L.A. Case No. 19/2008-09 suggest that there is a signature of the petitioner on the voucher for payment. Only on the said finding the charges no. 1 and 3 are held to be proved, but there is no discussion and deliberation with respect to any of the defence taken by the petitioner, as to why the same is not acceptable and found baseless or incorrect.

26. The enquiry officer who had been acting in a position of an independent arbitrator, was obligated to record reasons in support of its conclusion, as it operates a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. The limited role of the petitioner, while working as a *Mapak* has not been taken into consideration, that too when the awardees themselves have filed categorical application before the Special Land Acquisition Officer, Gandak Project, Muzaffarpur that initially they have been allowed compensation only with respect to the land and when the same was resisted and fresh applications were



submitted by them; subsequent spot verification and measurement was done, which led to preparation of supplementary award and payment against their respective houses acquired in the proceeding. The awardees further submitted that the houses/structures are still present at the land, which though were acquired by the State Government but was not taken into consideration while preparation of award, initially. This Court finds that the department has also failed to consider the letter of the Deputy Development Commissioner, Muzaffarpur wrote in response to the letter of Senior Deputy Collector, In-charge, Muzaffarpur stating therein that the petitioner is not responsible for any alleged payment and found Avinash Kumar, Executive Assistant, Special Land Acquisition Officer, Muzaffarpur and cashier are responsible for all the misdeed.

27. Before parting with the case, it would also be relevant to consider one another aspect of the matter that with respect to the charges of defalcation leveled in the memo of charge, especially charge no. 2, Vigilance Case No. 53 of 2015 came to be lodged. After investigation, Final Form No. 137/2018 came to be submitted on 31.11.2018, which was duly accepted by the learned Special Court, Vigilance, North Bihar,



Muzaffarpur on 29.08.2019. The final report clearly suggests lack of evidence against the accused persons including the petitioner leading to closure of the criminal case, which order has never been questioned by the department. Though this Court is conscious of the settled law that evidence collected during the course of investigation and even its outcome has no material bearing over the departmental proceeding, where the standard of proof is based on preponderance of probability invariably but the efforts and action of the department could not be ignored outrightly.

28. Now coming to the impugned order, whereby the petitioner has been inflicted with the punishment of withholding of entire pension as contained in office order no. 50, dated 24.05.2017. A bare perusal of the order it appears, the Disciplinary Authority only reiterated the findings of the enquiry officer, but failed to consider and discuss any of the contention raised by the petitioner in his reply to the second show cause. The significance of recording reasons has been duly highlighted by the Apex Court in the case of *M/s. Kranti Associates Pvt. Ltd. & Anr. vs. Masood Ahmad Khan & Ors., (2010) 9 SCC 496*, wherein the Court held that the reasons have been held to be the heart and soul of an order, giving the insight



to the mind of the maker of the order that it considered all relevant aspects and discarded irrelevant aspect. It is the reason which facilitate the process of judicial review by the superior Court.

29. A learned Division Bench of this Court in the case of ***Kems Services Private Ltd. vs. The State of Bihar & Ors, (2014) 1 PLJR 622***, while emphasizing the duty caste upon the quasi judicial authority to record reasons held as follows:-

“The final order 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. To hold 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.”

30. This Court also finds substance in the submissions of learned Advocate for the petitioner based upon the decision of the Apex Court rendered in the case of ***Gyan Chand Chattar***



(supra), wherein the Court ruled in paragraph no. 35 as follows:-

“35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.”

31. Now coming to the order passed by the Appellate Authority, it would be pertinent to observe that the Court on being found the earlier order of the Appellate Authority as cryptic and devoid of any reason, relegated the same with a direction to pass a fresh order, giving reason after hearing the parties. Unfortunately, the same has not been done. This time again the Appellate Authority has stated through its impugned order that the petitioner failed to discharge his duty and after making manipulation in the record, the nature of the land has



been changed, which resulted into wrongful payment of compensation. However, taking note of the limited role of the petitioner, the order of punishment passed by the disciplinary authority withholding 100% of pension, stood modified to withholding of 50% of pension in terms of Rule 43(b) of the Bihar Pension Rules, 1950.

32. This Court finds that once the department has failed to produce any witnesses and/or no oral evidence has been examined, the documents on which reliance has been placed by the enquiry officer have not been proved and thus could not have been taken into consideration to conclude that the charges have been proved against the delinquent.

33. It is trite law that once the foundation of structure collapse, the super structure would automatically crumbled down. The memo of charge admittedly contains no list of witness and the entire enquiry appears to be perfunctory, inasmuch as, the department made it tender the documents but did not prove the contents thereof, based upon which the punishment has been inflicted, without considering the relevant aspects and any of the grounds raised by the petitioner, at any stage, and thus, in no circumstances the impugned orders can be held to be sustainable in law.



34. This Court left with no option, but to set aside the impugned orders as contained in order no. 12 dated 15.01.2019 as also order no. 50, dated 24.05.2017, passed by the Appellate Authority as well as the Disciplinary Authority respectively.

35. The respondent authorities are hereby directed to restore the 50% pension in favour of the petitioner forthwith.

36. The writ petition stands allowed.

37. There shall be no order as to cost.

38. Pending application(s) if any, also stands disposed off.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	21.04.2025
Uploading Date	23.06.2025
Transmission Date	NA

