

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.535 of 2021

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Anil Kumar Pandey, Son of Hinchh Narayan Pandey, resident of village- G.D. 262, Trivenipuram, P.O. - Jhunsi, District- Allahabad (U.P.) at present Village- Tiwaripur, P.O.- Dubawal, P.s.- Sarainayat, District- Allahabad (Uttar Pradesh)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna
3. The Engineer-in-Chief (Madhya) Water Resources Department, Government of Bihar, Patna
4. The Officer on Special Duty, Water Resources Department, Government of Bihar, Patna
5. The Chief Engineer, Water Resources Department, Balmiki Nagar, District- West Champaran, Bihar
6. The Executive Engineer, Main Western Canal Division, Balmiki Nagar, District- West Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Shashi Priya, Advocate Ms. Pankhuri, Advocate Mr. Ritwaj Raman, Advocate
For the Respondent/s	:	Mr. Ravish Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 22-04-2025

Heard the parties.

2. The petitioner is aggrieved with the order as contained in memo no. 1110 dated 09.09.2020 issued under the signature of the Deputy Secretary to the Government, Water Resources Department, Bihar, Patna whereby the appeal preferred by the petitioner against the order of dismissal as contained in memo no. 1654 dated 06.08.2019 came to be



rejected. The afore-noted order of dismissal dated 06.08.2019 issued by the Under Secretary to the government, Department of Water Resources, Government of Bihar, Patna is also put to challenge by filing the present writ petition.

3. The short matrix of the case is that while the petitioner was posted as Junior Engineer in Main Western Canal Division, Balmiki Nagar, he was served with Prapatra-K, alleging irregularities in excess payment of Rs. 24.65 crores in carrying out the construction work as also using local materials based on the report of Technical Verification Cell, Vigilance Department constituted for verification of used materials (stone, metal, stone chips) for the work done under Nepal Benefit Scheme-Gandak Project in the financial year 2010-11, 2011-12 and 2012-13. The report also suggest excess payment of Rs. 8,99,33,624/- made to the contractor. In response to the memo of charge, the petitioner submitted his show cause before the Engineer-in-Chief denying all the allegation and requested to exonerate from the charges levelled against him.

4. It is specifically contended in the reply to the memo of charge that non-entry of 'Lead' on record is not concerned with the petitioner, rather it is the responsibility of those Junior Engineers, who prepared the bill based upon the measurement book, which was also duly verified by the Executive Engineer



before approval of the same. On being dissatisfied with the explanation of the petitioner departmental proceeding was initiated against the petitioner vide order no. 115 contained in memo no. 1984 dated 09.11.2017 under Rule 17 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, in short Rules, 2005. The Conducting Officer as well as Presenting Officer were also appointed to facilitate the departmental enquiry; on completion of the enquiry, the Enquiry Officer submitted its enquiry report on 14.12.2018 and the charges levelled against the petitioner stand proved. The petitioner and other officers were found responsible for the excess payment of Rs. 8,99,33,624/- to the contractor. On receipt of the enquiry report the petitioner was served with the second show cause notice alongwith the enquiry report vide letter no. 8 dated 02.01.2019, which was duly responded by the petitioner well within time, denying all the charges. The Disciplinary Authority considered the enquiry report as well as the reply to the second show cause notice and passed the impugned order, inflicting the punishment of dismissal vide order as contained in memo no. 1654 dated 06.08.2019.

5. Aggrieved with the order of dismissal the petitioner filed an application by way of review on 27.08.2019 before the Principal Secretary, Water Resources Department, Government



of Bihar, Patna. Notwithstanding, pendency of the review application, when the same was not being disposed off, the petitioner approached this Court in C.W.J.C. No. 2170 of 2019 assailing the order of dismissal. The matter was heard by a Bench of this Court and finally came to be disposed off vide order dated 25.02.2020 directing the respondent to dispose off the petitioner's memorial with a reasoned and speaking order expeditiously. The order of the Hon'ble Court was brought to the notice of the respondent authorities, but no action was taken, compelling the petitioner to file a contempt petition and subsequent thereto, the review application of the petitioner came to be rejected vide order dated 09.09.2020, issued under the signature of Deputy Secretary to the Government, Water Resources Department, Government of Bihar, which is also impugned, herein.

6. Ms. Shashi Priya, learned Advocate for the petitioner while assailing the impugned orders has taken this Court through the memo of charge and submitted that it does not contain the list of witnesses and to support the charges, only the report of Vigilance Technical Examination Cell as well as the report of Enquiry Committee have been annexed. The response of the petitioner to the memo of charge has never been considered in the right perspective, inasmuch as, the petitioner



was at the relevant time posted as Junior Engineer in Main Western Canal Division to supervise the area only upto (vidu 35 to vidu 40) and no irregularity or any adverse noting has been given by the Vigilance team. Besides the afore-noted area, the petitioner was further deputed, pursuant to the order of the Chief Engineer as contained in letter no. 673 dated 09.05.2012, to supervise the area from vidu 4.00 to vidu 8.00, which is the subject matter of departmental proceeding. The alleged excess payment has been made based upon the measurement book and there is no material suggesting that the petitioner had ever been involved in extending the excess payment to the contractor.

7. Taking this Court through the enquiry report, it is further contended that there was no complain regarding any work performed by the petitioner and moreover, the petitioner was not specifically found guilty for such excess payment, rather Shri Braj Bhushan Sharma, Junior Engineer, Shri Anil Kumar Singh, Junior Engineer, Shri Shaquik Hussain, Assistant Engineer and Sri Dilip Kumar, Executive Engineer were found guilty for such irregularities in extending the excess payment as is evident from letter no. 2756 dated 29.05.2013, the copy of which is marked as Annexure-8. Moreover all the afore-noted persons, who were also subjected to punishment moved this Court by filing different writ petitions and the impugned



order(s) came to be set aside; the matters were relegated to the authorities to proceed afresh, in accordance with law.

8. It is further contended that entire proceeding leading to punishment is against all the settled cannons of law, inasmuch as, the statutory prescriptions as provided under the Rules, 2005, has given complete go by; no witnesses were examined to prove the contents of the enquiry report submitted by the Technical Cell of Vigilance Department, based upon which the Enquiry Officer has come to the conclusion that the charges stand proved.

9. It is further contended that the enquiry report is not based upon any legal evidence and mere production of the document itself without its proof cannot have a legal value in the eye of law, in light of the fact and the settled principle, if the author of the document is not produced before the enquiry officer, giving an opportunity to the Government servant to cross-examine the witness, it cannot take shape of legal evidence. A strong reliance has been placed on a decision rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors., (2009) 2 SCC 570.***

10. Taking this Court through the impugned order of dismissal it is further contended that there is no deliberation and discussion as to why the explanation of the petitioner is not



found acceptable and the disciplinary authority inflicted the punishment of dismissal based upon the report of the Technical Cell of Vigilance Department, which cannot be said to be admissible evidence, unless the contents thereof is proved by the oral evidence. The similar mistake has been committed by the reviewing authority, who did not consider the grounds taken in the review and passed the impugned order without application of mind. Thus, the finding of the disciplinary authority as well as reviewing authority is based upon no evidence, hence prayer has been made to set aside both the impugned orders.

11. *Per Contra*, Mr. Ravish Chandra, learned Advocate for the State refuting the afore-noted contention has vehemently submitted that the petitioner has been offered sufficient opportunity to rebut the allegation, but he failed to do so. The enquiry officer has considered the written statement/explanation of the petitioner thoroughly and on being found materials available on record, the charges stood proved. The petitioner was served with the second show cause notice, however his explanation did not satisfy the disciplinary authority, which resulted into passing of the dismissal order. The charges against the petitioner and others are quite serious in nature, causing embezzlement of Government money; hence the order of dismissal is proportionate to the charges levelled



against the petitioner.

12. It is further contended that there is no serious irregularities or lapses in the departmental proceeding which requires any interference by this Court; all the more, while exercising the power of judicial review, the Court cannot re-appreciate the evidence or the findings recorded by the enquiry officer or disciplinary authority unless it is, *prima facie*, based on erroneous consideration and perverse.

13. This Court having given anxious consideration to the submissions advanced on behalf of learned Advocate for the respective parties and after meticulous perusal of the materials available on record is of the opinion that the impugned orders suffer from various infirmities, inasmuch as, the statutory prescriptions as provided under Rules, 2005 has not even been adhered to, depriving the petitioner from fair procedure under the law causing serious prejudice to the right and his entitlement for the reasons noted hereinafter.

14. After going through the Rules, 2005, especially Rule 17, which provides procedure for imposing major penalty; there is specific prescription under Sub-Rule 3 thereof, which obligates the disciplinary authority, in case it is proposed to hold enquiry against a Government servant to draw or cause to be drawn up *inter alia* the substance of imputation of misconduct



or misbehaviour in a distinct article of charge, a list of such documents by which and a list of such witnesses by whom the articles of charge are proposed to be sustained. The Rule 17(4) cast a duty upon the disciplinary authority to deliver or cause to be delivered to the Government servant all the necessary documents as has been disclosed in Sub Rule 3 of Rule 17. Further Rule 17(14) provides that on the date fixed for the enquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority; the witness shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant.

15. The Government of Bihar in the Department of Personnel and Administrative Reforms, in order to sensitize the authorities who have been assigned the task and responsibility for proper disposal of the disciplinary proceeding, has come out with a circular dated 12.10.2008, containing a detailed checklist necessitating the disciplinary authority to provide the list of witnesses and documentary evidence in support of the charges alongwith the memo of charge.

16. Emphasizing the procedural fairness and compliance of the principles of natural justice, the Hon'ble Supreme Court, in case of *State of U.P. & Ors. vs. Saroj Kumar*



Sinha, (2010) 2 SCC 772 has ruled that it is a basic requirement of the rules of Principles of Natural Justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in punishment being imposed on the employee. In no circumstances the departmental enquiry be treated as casual exercise. The Court further mandated that an enquiry officer acting as a quasi-judicial authority holding the position of an independent adjudicator, not supposed to be representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the department as to whether the un rebutted evidence is sufficient to hold the charges are proved. The Hon'ble Court on being found no oral evidence has been examined, held the documents have not been proved and thus, it could not have been taken into consideration to conclude that the charges have been proved against the delinquent. A Bench of this Court in the case of *Pankaj Kumar vs. The State of Bihar & Ors., C.W.J.C. No. 5042 of 2016* has held that non-compliance of mandatory provision envisaged under Rule 17(3) and 17(4) would render the entire proceeding as null and void.

17. It is settled principle of law that mere production of a document is not enough; the contents of documentary evidence has to be proved by examining the witnesses. While



highlighting the aforesaid proposition, the Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors., (2009) 2 SCC 570*** has observed that entire proceeding falls to the ground for the simple reason that no witnesses were examined to prove the charges. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. In an enquiry the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer.

18. From the materials available on record, it also suggests that the enquiry officer, based upon the materials has found the petitioner not guilty for excess payment, rather Shri Braj Bhushan Sharma, Junior Engineer, Shri Anil Kumar Singh, Junior Engineer, Shri Shaquik Hussain, Assistant Engineer and Sri Dilip Kumar, Executive Engineer was held responsible for irregularities of such excess payment; notwithstanding the aforesaid fact, the petitioner also held guilty for the charges levelled in the memo of charge. It would be worth noting here that Mr. Braj Bhushan Sharma who was also inflicted with the order of dismissal, moved before this Court in C.W.J.C. No. 8711 of 2017 and the order of dismissal came to be set aside



and the case is remitted to the enquiry officer for holding a fresh enquiry, providing an opportunity to the petitioner to question/cross-examine the maker of the enquiry report.

19. Similarly, Mr. Shaquik Hussain, Assistant Engineer who was also inflicted with the similar punishment of dismissal moved this Court in C.W.J.C. No. 2402 of 2018, which came to be allowed based upon similar reason as noted hereinabove that the enquiry officer who reported against the petitioner and which report was the basis of the disciplinary authority passing an order of punishment of dismissal was not produced for him to be cross-examined by the petitioner.

20. The then Chief Engineer, Dinesh Kumar Chaudhary under whose supervision the construction was made, but he did not record any anomalies committed by the contractor and thus, on being found guilty of major misconduct, he was inflicted with the punishment of reversal, which order was questioned in C.W.J.C. No. 16258 of 2017 and a Bench of this Court vide its order dated 04.12.2018 set aside the enquiry report as well as the impugned order and the matter is remanded back to the enquiry officer giving direction to conduct the enquiry as per the law.

21. The learned co-ordinate Bench found that finding of the enquiry officer is based upon the enquiry report submitted



by the enquiry committee and the person, who had conducted the enquiry and verified the fact, was not brought before the Enquiry Officer so that the petitioner could have opportunity to cross-examine that witness to challenge authenticity of the report, produced before the enquiry officer for the purposes of taking into consideration while arriving to a finding in a departmental proceeding and the enquiry officer without giving this opportunity has found the charges proved against the petitioner. The aforesaid finding of the Court was further buttressed by highlighting the observations of the Hon'ble Supreme Court in the case of ***Roop Singh Negi (supra)***. The orders of this Court, noted hereinabove, have been placed on record vide Annexure 11, 12 and 13 to the reply to the counter affidavit.

22. In the case in hand, it is the admitted position that the order of dismissal passed by the disciplinary authority, as well as the finding of the enquiry officer, holding the petitioner guilty of the charges are based upon the report of the Technical Vigilance Cell of the department, whose member and the authors have never been examined by the enquiry officer so that the petitioner could have opportunity to cross-examine them; hence the enquiry proceeding and the report cannot stand scrutiny of the fairness, as it is not based upon the legal



evidence and thus, no value in the eye of law.

23. Now coming to the order of dismissal passed by the disciplinary authority *prima facie* suggest that there is absolutely no discussion either in respect of evidence in support of the allegation or the submission made by the petitioner in his defence. Issuance of second show cause notice is not an empty formality, it is an opportunity given to the delinquent to point out infirmities in the enquiry conducted by the enquiry officer or the presenting officer and/or to highlight the points/defence which could not have been considered by the enquiry officer before giving finding of the guilt. Non-consideration of the second show cause notice or by saying that it was not satisfactory or acceptable in his opinion, clearly suggest that the disciplinary authority has not applied his independent mind and only reiterated and reaffirms the report of the enquiry officer.

24. While examining the legality of an order passed, either by the disciplinary authority or the reviewing authority, rejecting the contention of the delinquent in one line by saying that it was not satisfactory or acceptable, has been deprecated by the Court and held that it would amount to vesting completely arbitrary and uncanalized power in the authority in a given situation when the cause shown by the delinquent is difficult to deal and reject. It shall be very convenient for the authorities



concerned not to discuss the matter and reject it by simply stating that it was not acceptable. [vide : ***Kerns Services Private Ltd. vs. The State of Bihar & Ors : (2014) 1 PLJR 622***]

25. A disciplinary authority is under obligation to consider the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed. The delinquent is entitled to the consideration of the show cause by the disciplinary authority and the application of mind of said authority is imperative, before imposing any punishment. Thus, where no reason is assigned as to why the reply is found unsatisfactory and punishment is imposed thereupon, it only becomes apparent that there has been no application of mind by the authority for giving of reasons in support of an order which affects a persons basic need of the principle of natural justice.

26. The afore-noted position of law has been highlighted in various cases by the Apex Court as well as this Court on number of occasion in order to remind the settled principle of law it would be apposite to encapsulate the relevant paragraphs 18 and 19 of the judgment of the Division Bench of this Court rendered in case of ***The State of Bihar vs. Arun Kumar Dubey, L.P.A. No. 837 of 2023*** wherein the Court has reproduced the mandate of the Apex Court as under :-

“18. A Disciplinary Authority is under



obligation to provide consideration of the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed. The delinquent is entitled to the consideration of the show-cause by the Disciplinary Authority and the application of mind of said authority is imperative, before imposing any punishment. Thus, where no reason is assigned as to why the reply is found unsatisfactory and punishment is imposed thereupon, it only becomes apparent that there has been no application of mind by the authority for giving of reasons in support of an order, which effects a person's basic need of the principles of natural justice.

19. The Hon'ble Apex Court in the case of Barium Chemical Limited v. A.J. Rana [(1972) 1 SCC 240 : AIR 1972 SC 591], while highlighting the merit of the word "Considers" has observed as follows:- "14. The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is to attentively survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, to think oneself, to reflect, (vide shorter Oxford Dictionary). According to words and phrases-permanent Edn. Vol.8-A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination, to ponder, study; mediate upon think or reflect with care".

27. This Court has also been informed that during the



pendency of the writ petition, the petitioner came to be superannuated in the year 2022 itself and thus, in the opinion of this Court, relegating the matter would not be in the interest of justice as a remand in the present case on finding the enquiry and proceeding to be vitiated on technical ground is to avoid prejudice to the delinquent employee and it can be a measure to cover up the negligence or laxity of the disciplinary authority in conducting a proper enquiry. The Division Bench of this Court in the case of *The State of Bihar & Ors. Vs. Vikas Kumar, L.P.A. No. 446 of 2024* and further in *Srikant Singh vs. The State of Bihar & Ors., L.P.A. No. 58 of 2024* have consistently recorded the finding aforenoted.

28. In view of the discussions made hereinabove and the settled proposition of law, this Court has no hesitation to hold and declare the impugned orders are wholly unsustainable and fit to be quashed; accordingly the order contained in memo no. 1654 dated 06.08.2019 as well as 1110 dated 09.09.2020 are hereby set aside. On account of setting aside the impugned orders, the petitioner shall be entitled to all the consequential benefits, which shall be paid to him preferably within a period of 12 weeks from the date of receipt/production of a copy of this order, in accordance with law.

29. The writ petition stands allowed.



30. The pending application, if any, shall also stands disposed off.

31. There shall be no order as to costs.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2025
Transmission Date	NA

