

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21259 of 2019

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Bibhuti Kumar Singh, S/o Late Mani Lal Singh, Resident of Village- Borna,
P.S.- Gogri, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government. of Bihar, Patna
2. The Additional Secretary, Water Resources Department, Government of Bihar, Patna
3. The Engineer in Chief (Irrigation Creation), Water Resources Department, Government of Bihar, Patna
4. The Deputy Secretary to the Government Water Resources Department, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioners	:	Mr. Prabhat Ranjan, Advocate Mr. Ansh Prasad, Advocate Mr. Shubham Prakash, Advocate
For the State	:	Mr. Ranjan Prakash, AC to GA-2 Mr. Sumant Kumar Singh, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 10-11-2025

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application for the following reliefs :-

“1. (i) Quashing of the Enquiry Report dated 14.12.2018 (Annexure-3) submitted by the Enquiry/ Conducting Officer in connection with the Departmental proceedings instituted against the petitioner wherein, the Charges levelled against the petitioner stands



proved; and

(ii) Quashing of the consequential order of punishment bearing order No. 94 dated 06.08.2019 (Annexure 4) by which, the petitioner has been Dismissed from service Under Rule 14 (xi) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 with immediate effect.”

3. The case of the petitioner in brief is that the petitioner who was posted as Junior Engineer in Valmiki Nagar under the Chief Engineer, Water Resources Department was proceeded against in a departmental proceeding on the charge of having used substandard material in the restoration/construction work of a canal under the Gandak Project.

4. An enquiry was conducted by the Technical Vigilance Cell which submitted its report on 2.1.2013 to the Principal Secretary. On receipt of the report, a Three-member enquiry committee was constituted which assessed the loss caused to the Government as a result of the excess payment to the contractor to the tune of Rs.8.99 crores (approx.).

5. On the basis of the report submitted by the Technical Vigilance Cell and the Departmental Enquiry Committee, a show-cause notice was issued to which the petitioner filed his reply. Thereafter, the respondents decided to initiate a departmental proceeding against the petitioner under



the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as 'the Rules').

6. On being served with the charge-sheet, the petitioner submitted his defence along with the requisite documents. The Enquiry Officer submitted his report finding the charges against the petitioner to have been proved. Thereafter, an order of punishment dated 6.8.2019 was passed against the petitioner, dismissing him from service.

7. It is contended by learned counsel appearing for the petitioner that the petitioner was not served with a copy of the enquiry report. Further referring to the enquiry report in the departmental proceeding, a copy of which has been brought on record as Annexure-3 to the writ application, it is submitted that neither any witness was examined on behalf the Management in support of the allegations/charges nor any document was exhibited or proved. Thus, the order of punishment on the basis of such an enquiry report was not sustainable and fit to be set aside. It was further submitted that even before passing of the order of punishment, no second show-cause notice was issued to the petitioner. In support of his contention, learned for the petitioner has placed reliance on the judgment of the Supreme Court in the case of **Satyendra Singh vs. State of Uttar**



Pradesh & Anr.; 2024 SCC Online SC 3325 and judgment dated 19.10.2023 of this Court in **LPA no.1302 of 2017 (Devendra Pradesh vs. The State of Bihar & Ors.)**.

8. The application is opposed by learned counsel appearing for the respondents who submits that in the restoration work of the Main Western Canal, Valmiki Nagar being carried out, on complaints lodged by the local people about substandard materials being used by the contractor in connivance with the engineers, an enquiry was got conducted. Steps were taken pursuant to the enquiry report of the Vigilance Departmental and a disciplinary proceeding was initiated against the petitioner under the Rules leading to the order of punishment of dismissal from service.

9. It is submitted by learned counsel for the respondents that the petitioner participated in the departmental enquiry and submitted his defence. Alongwith a copy of the enquiry report, a second show-cause notice was issued to the petitioner vide letter no.7 dated 2.1.2019, however he did not submit his reply thereto. In the departmental proceeding there was no procedural error and the principles of natural justice was adhered to. There is no illegality in the order of punishment, no merit in the instant application and as such the same be



dismissed.

10. Heard learned counsel for the parties and perused the material on record.

11. The relevant facts in brief are that at the relevant time when the petitioner was posted as Junior Engineer, Main Western Canal Division, Valmiki Nagar during the period 2010-12, restoration work of the Main Western Canal, Valmiki Nagar (Nepal portion) was executed under the *Nepal Hitkari Yojna, 2009*. On complaint being received from the local people in the Ministry of Water Resources, Government of India alleging that local and substandard quality of material was being used in the work by the contractor in connivance with the concerned engineers and payments were being made causing huge loss of approximately Rs.20 crores, an enquiry was ordered into the allegations. The Technical Cell of the Vigilance Department enquired into the matter and reported the use of local and substandard materials in the work carried out. A number of discrepancies were found including the average percentage of plain surface metal being found to be 61.62 in laboratory test. Though transport challans of metals were issued from Sheikhpura, there was no evidence of the same reaching the work site. Further, the challans were issued by Camfa



Construction Company after the date on which it had surrendered the lease of mines to the Mines Department. As per the report of the Vigilance Department, Rs.11-12 crores had wrongly been paid to the contractor as he had used local materials of substandard quality. The Department recommended the recovery of excess payment made. On the basis of the report of the Vigilance Department, the engineers including the petitioner herein were put under suspension and a disciplinary proceeding initiated. The petitioner was served with the charges in Form-ka being that he was involved in execution of substandard work by allowing the use of local and substandard materials and had facilitated excess payment of Rs.8.99 crores to the contractor.

12. The petitioner filed his written defence to the charges. He appeared before the Enquiry Officer and participated in the enquiry. An enquiry report was submitted on 14.12.2018.

13. A second show-cause notice was issued to the petitioner vide letter no.7 dated 2.1.2019, enclosing a copy of the enquiry report and asking the petitioner to submit his reply within a period of 15 days.

14. It may be observed here itself that the statement of



the second show-cause having been served by the respondents on the petitioner along with the copy of the enquiry report has not been denied by the petitioner. No reply has been filed by the petitioner in response to the counter affidavit.

15. The respondents having gone through the contents of the enquiry report proceeded to pass an order of punishment dated 6.8.2019, dismissing the petitioner from service.

16. On perusal of the contents of the enquiry report, a copy of which has been brought on record as Annexure-3 to the writ application, it transpires that the Enquiry Officer has placed reliance on various paragraphs of the Enquiry Report no.61 of 2012 submitted by the Vigilance Department. However, it also transpires that neither any witness was examined on behalf of the Management in support of the allegations/charges against the petitioner nor was the vigilance enquiry report or any other documents exhibited and proved in course of the enquiry.

17. At this stage, it would be relevant to take note of relevant paragraphs of the judgment of the Hon'ble Supreme Court in the case of **Satyendra Singh** (*supra*) relied on by learned counsel for the petitioner. The same are :-

“13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a



major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank and Nirmala J. Jhala v. State of Gujarat.

14. In the case of Roop Singh Negi, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under:—

“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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was



the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

.....

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of



the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...

(emphasis supplied)

15. Same view was reiterated in *State of Uttar Pradesh v. Saroj Kumar Sinha*, wherein, this Court held that even in an *ex-parte* inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in *Saroj Kumar Sinha* are as follows:—

“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 un rebutted 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.



....

33. *As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.*”

(emphasis supplied)

16. *In the case of Nirmala J. Jhala this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under:—*

“42. A Constitution Bench of this Court in *Amalendu Ghosh v. North Eastern Railway* [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in



respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in *Champaklal Chimanlal Shah v. Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held *ex parte*, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

“12. ... There must therefore be no confusion between the two enquiries and it is only when the



government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [. nor prior to that].”

44. In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra* [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor; remains of no consequence.”

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it.



and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

(emphasis supplied)

17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi and Nirmala J. Jhala, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.”

18. So far as the facts of the instant case are concerned, herein also no witness was examined, no oral evidence lead nor any document exhibited or proved in support of the allegations levelled against the petitioner. In such view of the matter, the order of punishment imposing the penalty of dismissal from service is vitiated and not sustainable in law.

19. Accordingly, the order of punishment of dismissal from service of the petitioner as contained in Order no.94 dated 6.8.2019 (Annexure-4) issued under the signature of the



Additional Secretary, Water Resources Department,
Government of Bihar is set aside.

20. However in view of the nature of allegation of excess payment of Rs.8.99 crores (approx.), the allegations having been found to be *prima facie* correct in the report of the Vigilance Department and the enquiry report having been submitted in the case on 14.12.2018, liberty is granted to the respondents to proceed against the petitioner in accordance with law from the stage of enquiry.

21. The respondents will proceed with the enquiry in accordance with law and conclude the same at the earliest preferably within a period of six months from the date of communication/receipt of a copy of this order.

22. The writ application stands allowed to the above extent with the above observations and directions.

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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