

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17391 of 2023

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Mahendra Chaudhary S/o Basant Chaudhary, Resident of Mohalla- Punar,
P.O. and P.S. - Punar, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Engineer- in- Chief, Irrigation Creation, Water Resources Department, Government of Bihar, Patna.
4. The Additional Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
7. The Chief Engineer, Irrigation Creation, Water Resources Department, Saharsa.
8. The Superintending Engineer, Irrigation Circle, Purnia.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Alok Ranjan, Advocate
For the Respondent/s : Mr Ajay, GA V

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 16-01-2025

The challenge in this petition is to the order dated 05.01.2018 (Annexure P/7) whereby and whereunder the Disciplinary Authority, on the basis of enquiry report, imposed major penalty of withholding of three increments with cumulative effect and ban on promotion for three years from the due date to the petitioner. Also challenge is to the order dated 05.05.2020



(Annexure P/10) whereby the review application against the said order of punishment has been rejected.

2 Facts of the case are that the petitioner initially joined the service on the post of Assistant Engineer under the Chief Engineer, Birpur. In the year 2012, he was transferred and directed to join and take charge of the office of the irrigation Division, Araria as Executive Engineer and, accordingly, he took charge of the Division on 26.12.2012. He was also given additional charge of Irrigation Division, Bathanaha and Irrigation Division, Narpatganj on 08.03.2013. Before joining and taking the additional charge of above places, construction of canal siphon structure in Irrigation Division, Bathanaha was going on in which dewatering was required before the construction/excavation of earth, but there was no provision of dewatering in the agreement. The Chief Engineer, vide his letter dated 09.12.2011, gave the order to construct the siphon structure with dewatering and account of dewatering was to be maintained in the log book and payment of dewatering shall be made as per actual work done of dewatering. It is alleged that the petitioner did not supervise the work properly and got executed the dewatering work in uncontrolled manner. He also facilitated unjustified payment to the contractor against the total claimed amount. The said



irregularities were pointed out in the site inspection report of the higher authorities. On the basis of that, the departmental proceeding was initiated against the petitioner under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. the Enquiry Officer and the Presenting Officer were also appointed. Charge memo has also been issued to the petitioner. The Enquiry Officer found the charges proved against the petitioner and on the basis of enquiry report, the impugned order (Annexure P/7) has been passed by the Disciplinary Authority whereby the Disciplinary Authority inflicted major punishment against the petitioner which has been affirmed by the Revisional Authority by order dated 05.05.2020 (Annexure P/10). Hence, this petition.

3 Learned counsel for the petitioner would submit that during the course of enquiry, though the Enquiry Officer and the Presenting Officer were appointed but along with the charge memo, no list of witnesses were submitted nor supplied to the petitioner. He further submits that during the course of enquiry, none of the witnesses have been examined by the department and the Enquiry Officer, only on the basis of the reply submitted by the petitioner, arrived on the conclusion that the explanation submitted by the petitioner is not satisfactory and found the charges proved



against the petitioner. Therefore, a grave violation of principles of natural justice is there. He further submits that in the second show cause also, no proposed punishment was mentioned, inspite of that, the petitioner has been inflicted with major penalty. He further submits that the Disciplinary Authority, while imposing the major penalty, also did not consider the explanation submitted by the petitioner and, only on the basis of opinion and enquiry report submitted by the Enquiry Officer, punished the petitioner which has also wrongly been affirmed by the Reviewing Authority. The learned counsel has placed his reliance on the judgment passed by a Division Bench of this Court in the case of ***Ravindra Nath Chourasia -Versus- The State of Bihar & Others (LPA No 462 of 2024 in Civil Writ Jurisdiction Case No 3662 of 2020***. Reliance is also placed on the judgment passed by the Supreme Court in the case of ***Union of India & Others -Versus P Gunasekaran, (2015) 2 SCC 610***.

4 Learned counsel for the respondent-State opposes the arguments raised by the learned counsel for the petitioner and submits that both the impugned orders have been passed by the authorities after giving ample opportunity of hearing to the petitioner. Therefore, there is no any violation of principles of natural justice. Since both the impugned orders do not suffer from



any infirmity and, thus, do not require any interference by this Court.

5 Heard learned counsel appearing for both the parties and perused the documents annexed with the petition as well as the counter affidavit.

6 Perusal of the enquiry report clearly shows that during the course of enquiry, the Enquiry Officer neither recorded any statement of any witness nor the department produced any witness for establishing the case of department. The enquiry officer, only on the basis of reply submitted by the petitioner (delinquent employee) arrived on the conclusion that the reply submitted by the petitioner (delinquent employee) is not satisfactory and found the charges proved against him meaning thereby the enquiry officer shifted the burden of proof to the petitioner (delinquent employee).

7 Dealing with this issue, a Division Bench of this Court in the case of *Ravindra Nath Chourasia (supra)* observed and held as under:

“15. We cannot but notice the trite principle that burden of proof never shifts and only the onus shifts from the person who has the burden, on his discharging such burden. In a disciplinary enquiry where allegations of misconducts are raised it is for the department to establish the misconducts in the enquiry, by examining witnesses and producing



documents, substantiating the allegations raised. Only when such burden is discharged, the onus shifts to the delinquent employee to disprove the case of the department or to substantiate the explanation for his actions. In the present case, there is absolutely no evidence led and the allegations were not at all proved. Such a proceeding cannot lead to finding of guilt of the delinquent employee of the misconducts alleged.”

8 A close scrutiny of the facts of this case in hand clearly shows that in this matter also, there is a gross violation of principles of natural justice, as no proper opportunity of hearing has been given to the petitioner, no list of witnesses was provided to him and further the Department also did not examine any witness in support of its case. The Enquiry Officer shifted the burden of proof to the petitioner and, only on the basis of reply of show cause submitted by the petitioner, arrived on the conclusion that his explanation is not satisfactory and charges levelled against him were found proved. The Disciplinary Authority as well as the Reviewing Authority also did not consider this aspect and passed the impugned orders mechanically. Therefore, both the orders (Annexure P/7) dated 05.01.2018 passed by the Disciplinary Authority and Annexure P/10 dated 05.05.2020 passed by the Reviewing Authority are liable to be quashed.

9 Accordingly, both the orders are hereby quashed.



10 The petition is allowed. The petitioner is entitled for all consequential benefits.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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