

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7702 of 2020

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Rajeshwar Dayal Son of Late Tetar Ram, Resident of Flat No. 102, Space Shiva Apartment, Post Office Road, P.S. Shastri Nagar, District, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Departmental Enquiry Commissioner, Government of Bihar, Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission, through its Chairman.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Adv.
For the Respondent/s : Mr. Sudhanshu Bhushan, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-07-2026

Heard Mr. Prabhat Ranjan, learned Advocate for the petitioner and Mr. Sudhanshu Bhushan, learned AC to GP-7.

2. The petitioner is aggrieved with the Notification bearing Memo No. 506 dated 11.04.2017, whereby he has been inflicted with the punishment of withholding 50% of his pension permanently under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as "the Rules, 1950"). The petitioner has also challenged Notification No. 766 dated 19.03.2018, whereby the review application preferred against the order of punishment has been rejected. He has further questioned the enquiry report



dated 22.02.2016 submitted by the Departmental Enquiry Commissioner in Departmental Proceeding No. 54 of 2015.

3. The brief facts leading to the filing of the present writ petition are that while the petitioner was working as Director, WALMI, he was entrusted with the additional charge of the post of Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna, w.e.f. 29.06.2009. During the period he was holding the additional charge, certain allegations surfaced in relation to the execution of the Nepal Hitkari Scheme under the Gandak Project, 2009, wherein excess payments under the head of transportation were allegedly made.

4. While the matter was under scrutiny at the departmental level, the petitioner superannuated from service on 30.09.2014. Upon completion of the preliminary enquiry, the Department resolved to initiate a departmental proceeding against the petitioner and, accordingly, vide Resolution bearing Memo No. 2018 dated 08.09.2015, a proceeding under Rule 43(b) of the Rules, 1950 was instituted. A Departmental Enquiry Commissioner was appointed as the Enquiry Officer, whereas the Deputy Director-I, Water Sciences and Planning Organization, Patna, was nominated as the Presenting Officer to represent the State.



5. Along with the said resolution, the petitioner was served with a memorandum of charges with the statement of imputations and the list of documents. The petitioner entered appearance and submitted an elaborate written statement of defence controverting the allegations levelled against him. Upon conclusion of the enquiry, the Enquiry Officer submitted his report vide Letter No. 85 dated 22.02.2016 holding both the charges to be proved.

6. Thereafter, a second show-cause notice along with a copy of the enquiry report was served upon the petitioner, to which he submitted his reply. However, finding the explanation unsatisfactory, the disciplinary authority passed the impugned Notification bearing Memo No. 506 dated 11.04.2017 imposing the punishment of permanent withholding of 50% of the petitioner's pension.

7. Assailing the impugned order, learned Advocate for the petitioner primarily contended that in view of the second proviso to Rule 43(b) of the Rules, 1950, the respondents were required to conduct the departmental proceeding in accordance with the procedure applicable to a proceeding in which an order of dismissal from service may be passed. According to him, the mandatory procedure prescribed therein has not been followed.



It is further submitted that the memorandum of charges does not contain the list of witnesses by whom the articles of charge were proposed to be proved.

8. It is contended that in the absence of any witness, the contents of the documents and reports relied upon by the Department could not have been proved merely by producing the documents. Consequently, the findings recorded by the Enquiry Officer are unsustainable. In support of the said submission, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Satyendra Singh v. State of Uttar Pradesh & Anr.*, (2024) INSC 873. It is further argued that the petitioner, while holding the additional charge of Engineer-in-Chief, was assigned only administrative responsibilities and had no direct role in supervising the execution of the project, which responsibility vested with the Executive Engineer and the Chief Engineer concerned.

9. It is further submitted that although the petitioner submitted a detailed reply to the second show-cause notice, the disciplinary authority has neither considered nor dealt with the specific defence raised therein. The impugned order merely reproduces the findings of the Enquiry Officer and proceeds to impose punishment without assigning any independent reasons.



10. Learned Advocate further submitted that while imposing the punishment, the disciplinary authority has travelled beyond the scope of the charges contained in the memorandum of charges. According to him, throughout the enquiry there was no allegation, much less any evidence, establishing that the petitioner was personally responsible for causing any financial loss to the Government. Nevertheless, while imposing punishment, the disciplinary authority has attributed a loss of Rs. 8.99 crore to the petitioner, although such allegation never formed part of the charge-sheet.

11. *Per contra*, learned Advocate appearing for the State, submitted that while exercising the power of judicial review, this Court cannot sit in appeal over the findings recorded in a departmental proceeding or reappreciate the evidence on record. It is submitted that the enquiry has been conducted strictly in accordance with the prescribed procedure. Referring to Clause 15 of the Bihar Public Works Department Code, it is contended that the Engineer-in-Chief, being the administrative head of the Department, was responsible for ensuring proper supervision and monitoring of the project. According to the State, had the petitioner discharged his duties with due diligence, the State exchequer would not have suffered the



alleged loss of more than Rs. 8.99 crore.

12. Having considered the rival submissions and upon perusal of the materials available on record, this Court finds that the memorandum of charges does not contain the list of witnesses by whom the charges were proposed to be established. Admittedly, no witness was examined during the enquiry to prove either the documents or the reports relied upon by the Department. In the absence of oral evidence proving the contents of the documentary materials, the findings recorded by the Enquiry Officer cannot, *prima facie*, be sustained.

13. The Hon'ble Supreme Court has consistently held that where a disciplinary proceeding may culminate in a major penalty, recording of evidence is mandatory and mere production of documents is insufficient, unless the charge is based on impeccable documentary evidence, undisputed by delinquent. In ***Roop Singh Negi Vs. Punjab National Bank & Ors., (2009) 2 SCC 570***, the Supreme Court categorically held that production of documents by itself does not amount to proof of their contents and that documentary evidence must be proved through competent witnesses. The same principle has recently been reiterated in *Satyendra Singh* (supra).

14. At this stage, it would be apposite to reproduce



paragraphs 14 and 19 of the judgment in **Roop Singh Negi** (*supra*), which succinctly reiterate the aforesaid legal position.

“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.

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 an 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. It was furthermore found that the order



of the appellate authority suffered from non-application of mind.”

15. This Court also finds that the enquiry report fails to explain the precise nature of the duties entrusted to the petitioner as Engineer-in-Chief which he is alleged to have failed to discharge. Though the Bihar Public Works Department Code describes the Engineer-in-Chief as the administrative head of the Department responsible for its efficient functioning, the enquiry report does not disclose how such administrative responsibility had any direct nexus with the alleged excess payments made in the execution of the project. The materials on record indicate that the execution of the work, recording of measurements, quality control and release of payments were undertaken by the Executive Engineer on the basis of the Measurement Book and Quality Control Reports, upon getting the order of concerned Chief Engineer.

16. Equally significant is the fact that while dealing with the petitioner's reply to the second show-cause notice, the disciplinary authority has merely reproduced the defence taken by the petitioner without examining or discussing the same. Instead of independently considering the petitioner's explanation, the disciplinary authority has mechanically accepted the findings of the Enquiry Officer. Moreover, it has



travelled beyond the scope of the memorandum of charges by recording that the petitioner's conduct resulted in a financial loss of Rs. 8.99 crore to the Government, although no such charge was ever framed against him.

17. This Court further finds that neither the enquiry report nor the impugned order of punishment discloses any cogent material establishing a nexus between the petitioner's alleged omission and the irregularities detected in the execution of the project. There is no connecting link demonstrating that the alleged loss suffered by the State was attributable to any misconduct or negligence on the part of the petitioner. In the absence of such evidence, the finding of guilt cannot be sustained.

18. So far as the order passed in the review application is concerned, learned Advocate for the petitioner has fairly submitted that the review petition itself was misconceived since the original order of punishment had been passed by the State Government. Consequently, the order rejecting the review petition has no independent bearing on the adjudication of the present writ petition.

19. In view of the aforesaid facts and the settled legal position, this Court is of the considered opinion that Notification



bearing Memo No. 506 dated 11.04.2017, as contained in Annexure-5 to the writ petition, cannot be sustained in law and is, accordingly, set aside.

20. The writ petition stands allowed.

21. The respondents are directed to extend all admissible consequential benefits to the petitioner within a period of ten weeks from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-07-2026
Transmission Date	

