

(2012) 08 PAT CK 0101**Patna High Court****Case No:** CWJC No. 9356 of 2006

Lakshmi Narayan Paswan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Aug. 3, 2012**Citation:** (2013) 2 PLJR 867**Hon'ble Judges:** Navaniti Pd. Singh, J**Bench:** Single Bench**Advocate:** Rupak Kumar, for the Appellant; Tej Bahadur Singh and Shashi Priya Pathak, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

The petitioner at the relevant time was Executive Engineer in the Road Construction Department. He has been punished in a departmental proceeding by stoppage of two increments with cumulative effect and censor. There is counter affidavit and a rejoinder thereto. Heard the parties and with their consent, the writ petition is being disposed of at this stage itself.

2. Learned counsel for the petitioner states that when the enquiry report was submitted wherein only one of the charges was partially found sustainable and the disciplinary authority chose to differ with the enquiry report, it was incumbent upon him to give reasons for the same and communicate the same to the petitioner. This not having been done vitiates the disciplinary proceedings and consequently the punishment order. He submits that even otherwise if one looks to the charge that has been held to be partially proved, the findings of the Inquiry Officer can be said to be perverse, inasmuch as, it has no basis for the aforesaid. Similar is the case when ultimately the disciplinary authority finds the petitioner guilty and punishes.

3. Mr. Tej Bahadur Singh, learned AAG-VII on the other hand submits that there is no procedural infirmity in the departmental proceedings and this Court should not

go into the factual matrix.

4. Having heard the parties at length, in my view, the writ" petition must succeed. So far as the procedural aspect is concerned, I am inclined to agree with the learned AAG-VII. Mr. Rupak Kumar, learned Advocate appearing in support of the writ petition submits that it is well established that if the disciplinary authority seeks to defer from the enquiry report he must give specific and cogent reason for the same and communicate to the delinquent. In my view, the proposition is clear and un-exceptionable. However, the rational behind the proposition is that delinquent must be given an opportunity to meet the case as set up by the disciplinary authority, who has to take the decision ultimately. It is basically to conform to the principles of natural justice. Thus, wherefrom the communication of the disciplinary authority to the delinquent it is clearly evident for a reasonable person to understand what is being held by the disciplinary authority against the delinquent it amounts to grant of opportunity to delinquent to meet the same. Requirement of principles of natural justice is fully met.

5. In the present case, the Inquiry Officer, as noted above, found charge no. 4 partially proved and charge nos. 2 & 3 not proved. When the matter came to the disciplinary authority he found himself unable to agree with the report. He, therefore, communicated to the petitioner the grounds on which he found the charge to be established against him. He clearly indicated to the petitioner that petitioner as an Executive Engineer had prepared statement of facts for counter affidavit to be filed in the High Court giving wrong information that the disputed road in regard to which there was dispute lay within Bhagalpur West Division. This was wrong. This led to displeasure of the High Court. Payment were being denied to the contractor on the ground that this road is a subject matter of enquiry by C.B.I., in relation to Bitumen Scandal and no payment could be made. The Court found that road was not under investigation. Petitioner was, thus, asked to file a show cause as to why he be not held guilty, on differing from the enquiry. In my view, these facts were sufficient and clear enough to notice the petitioner for an effective reply. Giving elaborate reasons by notice for disagreeing with the enquiry report is not a golden rule. The idea is to communicate the decision and the fact which the disciplinary authority is holding against the delinquent. That having been done the requirement of natural justice is met.

6. Now, coming to the other aspects as raised by the petitioner with reference to records. He submits that the statement of fact as he had prepared which was countersigned by his superior, the Superintending Engineer was based on the earlier stand taken by the Engineer-in-Chief in the High Court in the counter affidavit filed in same case by the Engineer-in-Chief himself. The said counter affidavit is Annexure-4 to the writ petition. In that it is clearly stated that the stand of the State is that the road in question is under investigation by the C.B.I. Petitioner's stand is that being merely an Executive Engineer in the same proceeding he could not have

deviated or challenged the affidavit of Engineer-in-Chief himself. He had merely adopted the facts from the earlier counter affidavit. If he was wrong then the Engineer-in-Chief had taken a false stand which had misled the petitioner. He could not be faulted and proceeded against. Learned Additional Advocate General is unable to point out that the submission of Mr. Rupak Kumar, learned Advocate for the petitioner is wrong in any manner. I have examined the pleadings. It is apparent that by Annexure-4, which is copy of the counter affidavit duly sworn by the Engineer-in-Chief-cum-Secretary of the Road Construction Department himself, it is clearly stated that the road in question was under criminal investigation by the C.B.I., in Bitumen scandal. This affidavit was filed much prior to the statement of facts filed by the petitioner. Petitioner tried to be consistent and now has fallen on the ground of mis-statement of facts. The mistake may have been committed by the Engineer-in-Chief-cum-Secretary of the Road Construction Department himself. Unfortunately, the embarrassment caused to the Department was by the mis-statement of Engineer-in-Chief-cum-Secretary and obviously, the petitioner has been made scapegoat. Beyond this there is nothing against the petitioner as found by the disciplinary authority.

7. On these facts, in my view, no reasonable man could come to any other finding than to acquit the petitioner. Such being the reasonable inference to be drawn, the inference of guilt as drawn by the Inquiry Officer partially and fully by the disciplinary authority is wholly perverse. It is not based on correct facts. In that view of the matter, the order of the disciplinary authority cannot at all be sustained. The writ petition is, accordingly, allowed and the impugned order of punishment, as contained in Annexure-1, being the order passed by the State Government in the Road Construction Department dated 20.3.2006, is quashed with all consequential benefits.