

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8324 of 2011**

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Rameshwar Rai S/O Sri Radha Rai, R/O Village - Bagar, Police Station Sikrahta,  
District-Bhojpur.

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department Of Minor Irrigation Vikash Bhawan, New Secretariat, Patna.
3. The Engineers-In-Chief, Department Of Tube well Coordinator, Minor Irrigation Department, Vishwasrihya Bhawan, Patna.
4. The Chief Engineer (Sourth)Tube well Unit, Minor Irrigation Department, Seikhpura, Patna.
5. The Superintending Engineer, Tube well Coordinator, Unit, Minor Irrigation Department, Vishwasarriya Bhawan, Patna.
6. The Deputy Secretary, Minor Irrigation Department Government Bihar, Patna.
7. The Executive Engineer, Bihar Workshops Department And Trainer Institute, Patna.
8. The Sub Divisional Officer, Tube well Division, Mohania, District-Bhabhua.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjeev Kumar Mishra, Advocate  
For the Respondent/s : Mr. Pratik Kumar Sinha, AC to GA 5

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**CAV JUDGMENT**

**Date: 19-09-2017**

Seeking quashing of an order of punishment dated 04.06.2010 Annexure-17 imposing punishment of reduction in pension permanently by 20% under Rule 43(b) of the Bihar Pension Rules, 1950, treating the period of absence on 05.04.2003 as unauthorized absence and confirming the period of suspension under Rule 97(2) and (3) of the Bihar Service Code. 1952 this writ petition has been filed by the petitioner.

Facts in brief goes to show that the petitioner was



posted as a Fitter/Mechanic in the Central Workshop, Sheikhpura under the Minor Irrigation Department, Govt. of Bihar, and on 29.03.2003 he was deputed to work under Tube well Development Scheme, Mohania. It is alleged against him that instead of reporting for duty at Mohania, he produced a letter purportedly said to be signed by the then Chief Minister. In the departmental enquiry he was punished with the aforesaid punishment. Challenging the said order the writ petition has been filed.

Various grounds have been raised in the writ petition pertaining to procedural violation in conduct of the departmental enquiry, non-grant of opportunity of examination of the witnesses, perversity in the finding of the Enquiry Officer, acquittal of the petitioner in the criminal case which debars conduct of the departmental enquiry and the State Government has refuted the contentions.

However, while hearing the matter, this Court has found that the enquiry proceeding and the enquiry report are not available on record and, therefore, the State Government was directed to bring on record the enquiry proceeding and accordingly a supplementary affidavit has been filed on 21.08.2017, whereby vide Annexure-A the finding of the Enquiry Officer has been brought on record. A perusal of this document goes to show that it is a



tabulated report of the Enquiry Officer consisting of five columns. Column no. 1 indicates the serial number, column no. 2 are the two charges levelled against the petitioner, column no. 3 is a detailed explanation and justification of the delinquent employee, the petitioner herein, column no. 4 is the department's comments on the petitioner's explanation and column no. 5 in twelve lines is the finding of the Enquiry Officer dated 26.05.2009. If these findings of the Enquiry Officer is taken note of, it reads as follows:-

“हालांकि श्री राय ने अपने स्पष्टीकरण में माननीय मुख्यमंत्री, बिहार के जाली हस्ताक्षर एवं जाली वृतादेश युक्त पत्र मुख्य अभियंता के यहाँ समर्पित करने के आरोप से इन्कार किया है तथा इस कार्रवाई को किसी अनाम दुश्मन के द्वारा की गई करवाई बताया है।  
अपने उपर्युक्त तथ्यों के समर्थन में श्री राय ने कोई साक्ष्य उपलब्ध नहीं कराया है।  
वर्णित स्थिति में अद्योहस्ताक्षरी इस मामले में कार्यपालक अभियंता, केन्द्रीय कर्मशाला विकास एवं प्रशिक्षण संस्थान, पटना के मनतव्य से अपनी सहमति व्यक्त करते हैं।”

The only reason given by the Enquiry Officer is that in support of the explanation given, the petitioner has not given any evidence and, therefore, the allegation levelled against him is held to be proved. It is not indicated as to who are the witnesses, who are examined in the departmental enquiry, what is the statement given by those witnesses, what are the documents adduced in the departmental enquiry and how they have been analyzed and who are the witnesses examined to prove the allegation levelled against



the petitioner. Finding of the Enquiry Officer is a non-speaking order, does not show application of mind and based on such a finding an employee cannot be punished. In the case of **Anil Kumar vs. Presiding Officer & Ors. (AIR 1985 SC 1121)** it has been held by the Supreme Court that if a finding of the Enquiry Officer does not show the application of mind, if it is based on *ipse dixit* of the Enquiry Officer, such a perverse enquiry report amounts to breach of principle of natural justice and any action taken based on such enquiry report stands vitiated. If the report of the Enquiry Officer is analyzed and evaluated in the backdrop of the aforesaid principle, this Court has no hesitation in holding that the report of the Enquiry Officer is not proper report meeting the requirement of law and is liable to be quashed.

At this stage, it can be taken note that it is the case of the petitioner that the letter was never submitted by him which was planted in the office by somebody to take revenge against him and it was also his contention that he had joined the place of posting, was working there and, therefore, there is no question of producing the letter. It seems that the Enquiry Officer has not discussed all these questions. It is not indicated as to based on which evidence or which document he holds the charges proved. That being the position, this writ petition is liable to be allowed on this ground alone once the



finding of the Enquiry Officer is found to be perverse.

Keeping in view the aforesaid, the writ petition is allowed and the order impugned is quashed. All consequential benefits accruing thereto shall be granted to the petitioner within a reasonable period.

**(Rajendra Menon, CJ)**

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AFR/NAFR	NAFR
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