

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11738 of 2013

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Sujay Chandra Kishore Son Of Late Manindra Kishore Resident Of Mohalla -
Azadnagar Balutol, Motihari, P.S. Motihari, District - East Champaran

... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department, Government Of Bihar, Patna
3. The Deputy Secretary To The Government, Water Resources Department, Govt. Of Bihar, Patna

... .. Respondents

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Appearance :

For the Petitioner : Mr. Satish Chandra Jha-3, Advocate
Mr. Shambhoo Kumar 'Suman', Advocate
For the Respondent State: Mr. Sita Ram Yadav, GP-16
Mr. Jitendra Kumar, AC to GP-16

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-12-2019

By a Notification issued vide Memo No.712 dated 27.08.2008, under the signature of Deputy Secretary to the Government, Water Resources Department, Government of Bihar, following punishments have been imposed on the petitioner, under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 : -

“ i. Censure for the year 2002-03

ii. Stoppage of five increments with non cumulative effect.



iii. During the suspension period nothing will be paid except subsistence allowances, however said period shall be counted for the purpose of pension.”

2. The petitioner had filed a memorial in the form of review petition against the order under Rule 24(2) of the Rules before the State Government, which came to be rejected by a notification dated 06.05.2013. The said two Notifications dated 27.08.2008 (Annexure-2) and 06.05.2013 (Annexure-1) are under challenge in the present writ application filed under Article 226 of the Constitution of India.

3. I have heard Mr. Satish Chandra Jha No.3, learned counsel appearing on behalf of the petitioner and Mr. Jitendra Kumar, learned A.C. to G.P.-16.

4. The petitioner, at the relevant time, was posted as Assistant Engineer, Western Koshi Canal Division, Andhrathari (Madhubani). He was placed under suspension on the allegation of certain omissions and commissions by him and other officers of the said Canal Division, which had led to faulty/defective construction of extra C.D. construction at 23.50 point on Jhanjharpur Branch Canal. The order of suspension succeeded initiation of departmental proceedings against all of them with issuance of charge-sheets in accordance with Rule 17 of the Rules,



which prescribes procedure for imposition of major penalty. The charge-sheet, which was issued on 26.03.2008 to the petitioner, has been brought on record by way of Annexure-3 to the writ application. An Enquiry Officer and a Conducting Officer were appointed for the purpose of the departmental enquiry. There were two charges in the charge-sheet. It was alleged in the first charge that the construction was made in the year 2002-03, but the construction was so defective that it collapsed just after two years. It happened because the work was not executed as per the estimated plan and quality of the work was also poor. The cement used for the said construction was scientifically examined, which proved its poor quality. Further, the cement was not used in desired proportions. The comprehensive strength of bricks used for construction was found to be less than required strength. The water absorption capacity of the brick was also not up to mark. Though PCC was found done in the base of the canal, it was found not covered by soil. Secondly, collar joint of the hume pipes were not properly fixed because of which 30 joints opened up, leading to flow of canal water into the nearby drainage. For repair of the joints, the Government had to bear financial burden of Rs.2,83,164/-, causing loss to the public exchequer. Despite the said repair work done, the construction could not be saved and



because of sub-standard construction, it collapsed within three years.

5. For the aforementioned defective construction, the petitioner was found to be *prima facie* guilty/responsible, as stated in the charge-sheet.

6. It is noticeable here that the charge-sheet, though does mention poor quality of work found in construction of the said extra C.D., it does not point out specific omission on the part of the petitioner. It is also evident from the charge-sheet that it was based on an enquiry report submitted by Flying Squad of the Department, a copy of which was supplied to the petitioner along with the charge-sheet.

7. The petitioner submitted his written statement of defence. He denied the charges and asserted that the report submitted by 'Gaweshan Sansthan', on geoscientific investigation, based on the samples, which were taken after the repair work so done and it was not ensured that the materials were collected in the presence of such officers, who were connected in execution of the construction work in question.

8. There is statement made in paragraph 5 of the writ application that with similar allegation other Engineers, posted in the Sub Division in question, were also put under suspension and



in paragraph 7 that similar memoranda of charges were issued to the concerned Executive Engineer and Junior Engineers. There is no denial in the counter affidavit filed on behalf of the State of Bihar that the charges against other officials were same as were framed against the petitioner. This aspect, I have mentioned here itself for the reason that the petitioner has developed a case of discrimination with the assertion that with identical charges and identical materials, other officers have been finally let off.

9. The Enquiry Officer, who was of the rank of Chief Engineer, Water Resources Department, submitted his report on 05.06.2008 holding none of the charges to have been proved, in the absence of any evidence made available during the departmental enquiry. The Disciplinary Authority, however, differed with the findings recorded by the Enquiry Officer and issued tentative notices of disagreement to the petitioner to elicit his comments as to why the charges be not treated as proved. The petitioner responded to the said tentative notice of disagreement and filed his reply asserting that in the absence of any evidence, adduced during the departmental enquiry, proving omission on the part of the petitioner, the Enquiry Officer had rightly held the charges not to have been proved. The Disciplinary Authority, however, imposed the punishment as noted above.



10. I have carefully perused the Notification dated 27.08.2008. The impugned Notification apparently does not disclose any discussion on the petitioner's reply to the tentative notice of discrimination. There is vague reference of analysis of the show cause reply of the petitioner to the tentative notice of discrimination. I have no hesitation in reaching a conclusion on reading the said Notification that it is non-speaking and it does not refer to any evidence or material to substantiate any specific omission or commission on the part of the petitioner. As has been noted above, it is the petitioner's case that two other officials were also proceeded against with the same allegation, but against none of them, harsh punishment of stoppage of five increments has been imposed and one of them, namely, Chandra Mohan Mishra, Junior Engineer, has been exonerated of the charge by the Reviewing Authority.

11. Learned counsel appearing on behalf of the petitioner has argued that the Junior Engineers, namely, Chandra Mohan Mishra and Shyam Sundar Singh, under whose direction the construction work was completed, have been exonerated of the charge finally. He has argued that the Reviewing Authority had a duty to pass a reasoned order, which has not been done inasmuch



as the order does not at all deal with the grounds taken by the petitioner in his application seeking review.

12. I have already noticed above that the charges refer to collapse of a construction because of poor quality of work got done by the petitioner and other officials of the concerned Canal Division. The framing of charge is based on a report of a Flying Squad. The Flying Squad had, admittedly, not conducted any enquiry in presence of the petitioner. The report of the Flying Squad was the only material, which was supplied to the petitioner along with the charge-sheet, which was to be the basis for proving the charge. The Chief Engineer of the Department did not find the petitioner responsible for the poor quality of work and according to him there was no evidence adduced before him to establish the charge. Nothing has been brought to my notice, on behalf of the respondent State of Bihar, to show that in the tentative notice of disagreement, reference of any evidence available in the departmental enquiry, to establish the charge, was made and which was not considered by the Enquiry Officer wherein the petitioner was held not guilty. The order imposing punishment too does not disclose any application of mind.

13. In my opinion, it was obligatory for the Disciplinary Authority to have referred to the evidence, on the basis of which



charges could be said to have been proved while differing with the report of the Enquiry Officer, since the Enquiry Officer had mentioned in his report that there was no evidence to substantiate the charge.

14. In my opinion, therefore, the finding of the Disciplinary Authority, contrary to the report of the Enquiry Officer, is based on no evidence. The impugned order dated 27.08.2008, therefore, requires interference and the same is quashed. The subsequent order dated 06.05.2013, which has been passed on the petitioner's application seeking review also stands quashed.

15. Normally, after having quashed the impugned orders, I would have remanded the matter back to the Disciplinary Authority to take a decision afresh. However, since the impugned order was passed more than eight years ago and the petitioner appears to have superannuated long back, I do not find it to be in the interest of justice to remand the matter back. I have kept in mind the fact that the petitioner's plea of discrimination in the matter of imposition of punishment vis-a-vis other officers in the Department does not deserve to be brushed completely aside, there being no specific denial.

16. The writ application is accordingly allowed.



17. There shall be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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