

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7386 of 2000

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Rabindra Prasad son of Late Chakradhar Prasad, resident of Village Dhamdaha, police Station Dhamdaha, District Purnea, At present working as Executive Engineer, Officer of the Chief Engineer(North), Tubewell Wingh (Minor Irrigation), Muzaffarpur, District Muzaffarpur.

.... Petitioner/s

Versus

- 1.The State of Bihar through the Secretary, Water Resourced Department, Sinchai Bhawan, Harding Road, Patna.
- 2.The Special Seceretary, Department of Water Resources Sinchai Bhawan, Harding Road, Patna.
- 3.The Additional Secretary, Department of Water Resources, Sinchai Bhawan, harding Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv
Mr. Arvind Kumar Choudhary, Adv
Mr. Rajesh Kumar, Adv
Mr. Mani Madhukar, Adv

For the Respondent/s : Mr. Avanindra Kumar Jha AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

10 06-08-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application
reads as follows:-

“That this application is being filed for issuance of an appropriate writ/writs, order or orders, in the nature of certiorari for quashing the letter bearing memo no. 189 dated 31.10.1997 issued under the signature of respondent no. 2 as contained in annexure-10 to this application, by which the disciplinary authorities has awarded, censure for the year 1990-91, no promotion for seven years from due date, stoppage of three increment with cumulative effect, and no payment except subsistence allowance during suspension period, although services should be counted for other benefits including Pensionary benefits and further for issuance of a writ in the nature of mandamus directing and commanding the respondents to pay all service benefits to the petitioner, which has been given

to his Juniors and further for any other appropriate relief or reliefs for which the petitioner is entitled in the facts and circumstances for this case.”



From the pleadings on record in this writ application, it would transpire that the main ground for assailing the aforementioned order of punishment is that when the petitioner had filed his show cause reply on 29.09.1997, pursuant to second show cause notice dated 29.08.1997, the same was not at all considered and yet the order of punishment was passed on 31.10.1997 in complete violation of the directions given by this Court in the order dated 19.08.1997 passed in C.W.J.C No. 4910 of 1997.

This Court in order to examine this aspect has thought it necessary to get the original records both of the departmental proceeding as also the Government file from which the order of punishment has been issued against the petitioner.

Learned counsel for the State has produced the original records and the same have been perused to find



out as to whether the plea of the petitioner of his filing the reply to the second show cause notice dated 29.09.1997 and still being not considered by the authorities passing the impugned order dated 31.09.1997, is correct. This Court however from perusal of the record would find that such alleged show cause reply by the petitioner in the date of 29.09.1999 was actually filed on 15.11.1998 and much before that, the respondents in order to comply the peremptory order of this Court dated 19.08.1997, had passed the order of punishment.

It would be thus necessary to first record that what was said by this Court in the order dated 19.08.1997 in C.W.J.C No. 4910 of 1997. The same being relevant is quoted hereinbelow:-

“Heard learned counsel for the parties.

This is also another instance where suspension order followed by a disciplinary proceeding has been kept pending for indefinitely long period to the Prejudice of the petitioner. The petitioner has been suspended by an order dated 20.06.1991. Thereafter chargesheet was issued to the petitioner and the disciplinary proceeding followed. It appears that the disciplinary authority has also submitted his report on 30.5.1995 but till today no second show cause has been issued tot the petitioner and as such no final order has been passed for the last three years.



In that, view of the matter, this Court directs that if no second show cause is issued to the petitioner within a fortnight from today, the entire disciplinary proceeding against the petitioner including the order suspension shall stand quashed on and from 5.1.1997. But if any second show cause notice is issued to the petitioner before that date, the petitioner must give his reply by 30.9.1997 and the final order on the same must be passed 3.11.1997. In the event to final order is passed in the proceeding against the petitioner by 3.11.1997, the entire disciplinary proceeding including the order of suspension passed against the petitioner shall stand quashed and from 4.11.1997.

With the above observation direction, this writ petition is disposed of. There will be no order as to cost”.

It is an admitted position by both the parties that pursuant to the aforementioned order of this Court, a show cause notice was issued to the petitioner on 29.08.1997. Thus, the first part of the direction by this Court of issuing show cause notice within 15 days (within a fortnight) was duly complied by the respondents, inasmuch as, the show cause notice was issued to the petitioner on 29.08.1997.

It is also not in doubt that such show cause notice dated 29.08.1997 was received by the petitioner because when he was asked to file his show cause reply he, on 05.09.1997, had come out with a petition dated 05.09.1997 demanding as many as 17 documents. As a



matter of fact, such attitude and/or approach itself amounted adopting of to dilatory tactics by the petitioner. He infact forgot that he was required to file his reply to second show cause notice as against the findings recorded by the Enquiry Officer in his enquiry report.

It is here that this Court will have to accept the submission of learned counsel for the State that the petitioner was deliberately trying to delay the filing of the second show cause reply. This Court, therefore, has carefully gone into the official records to find out the date of receipt of the show cause reply filed allegedly on 29.09.1997. Let it be noted that the show cause reply was not sent through proper channel though the petitioner was only an Executive Engineer. As a matter of fact, any official communication to be made by Executive Engineer to the Government even in respect of show cause reply had to be routed through proper channel and at best he could have given advance copy.



From the record, which has been examined by this Court, it would become very clear that the petitioner had directly sent a copy to the Special Secretary, which was received on 15.11.1997, there is not only docketing of the said letter by as many as seven authorities but this fact was also recorded in the notesheet while passing and issuing the order of punishment on 31.10.1997, that the petitioner despite given time to file his show cause reply had not filed his show cause reply and therefore in order to comply the order of this Court dated 19.08.1997 in C.W.J.C. No. 4910 of 1997 such order had to be issued. From the notesheet portion in the file bearing no. 22/N.I.S.I(D.P) 10113/94, it would be found that such noting was given by the Special Secretary on 28.10.1997, and thereafter after approval of the competent authority the order was issued on 31.10.1997.

In that view of the matter, this Court will not find any error in passing the impugned order without considering the reply filed by the petitioner because both

were bound by inter parte order fixing the time limit.



Learned counsel for the petitioner, however, wants to explain that he had filed application on 05.09.1997 demanding 17 documents and he was asked to go to Deoghar to see those documents but the authorities of Deoghar has not given him the documents and kept him waiting till 30.10.1997 and he was helpless and had therefore, filed his reply on 29.09.1997. To that extent, he relies on Annexure-17, the letter of the petitioner dated 26.09.1997 addressed to the Chief Engineer, Deoghar and the reply of the Chief Engineer dated 30.09.1997.

The question would arise that if the petitioner had personally gone to Deoghar as he was directed on 23.09.1997, to take inspection of the documents and filed his show cause reply but then the time limit as fixed in the order of this Court, can he be heard to say that he came back to Khagaul and thereafter he had sent the reply on 29.09.1997, and thus received the letter



dated 30.09.1997. These are all cock and bull story which this Court must reject by keeping in mind that the petitioner was trying to avoid the consequences which were already set out in the inter parte order of this court dated 19.07.1997 in C.W.J.C. No. 4910 of 1997.

Once, this Court therefore finds that the petitioner himself avoided to submit his reply, there would be hardly any escape from the inevitable conclusion that the impugned order of punishment against the petitioner cannot be faulted either on the ground of such punishment being excessive or the only two of the charges having been proved. There is infact no procedural lapse in the departmental inquiry and therefore, the power of judicial review of this Court shall be very limited. Not only the petitioner but even others right from the Chief Engineer to Assistant Engineer have been punished for the misconduct committed by them.

Considering all these aspects and keeping in view that the order of punishment of the year 1997, cannot be

now interfered in the year 2015 at the point of time when the petitioner has already retired in the year 2001, this writ application must fail.

One thing, however, must be made clear that if the petitioner's increment from 1985, as is being now said by the learned counsel for the petitioner, has been withheld in view of order of punishment dated 31.10.1997, that cannot be done because the petitioner was subjected to stoppage of three increments on cumulative basis w.e.f. 31.10.1997. Thus the order of punishment dated 31.10.1997 cannot be given retrospective effect much less lead to withholding of the increment of the petitioner from 1985. This Court however must immediately clarify that if there be some other order of punishment which justifies withholding of increment of the petitioner from 1985 that would not be reopened but at least on the basis of order dated 31.10.1997, the petitioner's increment period from 1985 till 31.10.1997 cannot be withheld.

Since this aspect of the matter is neither subject matter of this writ application nor required to be gone into, all that this court can say that upon confirmation of the order of punishment dated 31.10.1997 by this Court, on account of dismissal of this writ application, whatever remaining service benefits are found admissible and payable to the petitioner including his increments from 1985 onwards and till the order of punishment dated 31.10.1997, if withheld due to pendency of this writ petition that must be examined and also if found payable to him be paid to the petitioner without being prejudiced by anything said in this order.

With the aforesaid limited observation this writ application is dismissed.

(Mihir Kumar Jha, J)

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