

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

**Civil Writ Jurisdiction Case No.10571 of 2001**

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1. Ashma Khatoon, wife of late Md. Tauheed
  2. Rahima Khatoon, daughter of late Md. Tauheed
  3. Nasima Khatoon, daughter of late Md. Tauheed
  4. Husna Khatoon, daughter of late Md. Tauheed
  5. Rukhsan Khatoon, daughter of late Md. Tauheed
  6. Md. Nizamuddin, son of late Md. Tauheed
  7. Md. Ziyauddin, son of late Md. Tauheed
  8. Shabana Khatoon, daughter of late Md. Tauheed
  9. Farzana Khatoon, daughter of late Md. Tauheed
  10. Sumaiya Khatoon, daughter of late Md. Tauheed

All residents of Sahebganj, P O and P S – Sahebganj, District –  
Muzaffarpur.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna.
2. The Deputy Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. R.N.MUKHOPADHAYA

For the Respondent/s : Mr. Avanindra Kumar Jha, AC to AAG 13  
Ms. Meera Singh, AC to AAG 13

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**ORAL JUDGMENT**

**Date: 16-04-2015**

A K Tripathi, J.

The original petitioner died during the pendency of the writ application. He was substituted by his legal heirs, whose names are available on record.

2. The original petitioner, who happened to be a Junior Engineer, filed the writ application for quashing the order of punishment, contained in Annexure-1 which is dated 27.5.1996. A set of charges relating to certain irregularities in execution of work of



what is known as Kamla Canal Division at Jainagar was pressed leading to imposition of punishments, such as censure for the year 1988-89, reduction to the lowest pay-scale. Though there was an indication that appropriate order would be passed for recovery of the loss incurred to the exchequer but no order on that score was passed. In addition to that, yet another punishment was that nothing shall be payable to the petitioner during the period of suspension except subsistence allowance.

3. The charges (Annexure-4) basically related to the manner in which estimates and bills were prepared, including the manner in which work was executed, which gave the authorities a feeling that without getting the work done properly, effort was made to beget benefit of payment to the contractor. For the two sets of charges enquiry was held by the enquiry officer, who happened to be the Chief Engineer of the Department. The enquiry report is Annexure-5.

5. Learned counsel representing the petitioners has taken this Court through the enquiry report and the findings with regard to two charges exonerating the original petitioner of any wrong doing. In normal course of things, the matter should have rested at that but in the present case, the employee was issued a second show cause and then the punishment order contained in Annexure-1, which are serious

in nature, came to be passed.

6. One glaring infirmity emerges in the manner in which the disciplinary authority has imposed the punishments without any notice of disagreement giving the reasons from the available material which could compel the disciplinary authority to disagree with the findings given by the enquiry officer. Even though the enquiry report exonerated the employee treating the same to be a finding against the petitioner, a second show cause was issued to which original petitioner replied. Ignoring the same the punishment, contained in Annexure-1, came to visit the original petitioner.

7. The law is well settled on this point that the disciplinary authority has the power to disagree with the findings of enquiry officer but disagreement must beget a right for the petitioner a notice of disagreement with the materials which have come during the course of enquiry, which must form the basis for disagreement. Reading of Anneuxre-6 does not indicate that that was the procedure adopted. It was treated as a routine disciplinary proceeding with a second show cause having been issued and then the order of punishment.

8. This is good enough ground for the Court to quash Annexure-1 and allow the writ application.

9. Counsel for the petitioners, however, also draws attention



of this Court to yet another adjudication made in the case of Hira Lal Choudhary v. The State of Bihar, who was also proceeded against in identical circumstance and he was punished. He filed CWJC No. 10590 of 2001, which was heard and decided on 21.8.2007. The learned Single Judge not only considered the matter in its entirety but also the various facets of law and the authority, which have laid down the principle relating to the manner in which a disciplinary authority is required to exercise its power of disagreement. The rationale and reasoning given in the case of Hira Lal Choudhary is also available to the present petitioner, who was also dealt with in similar and identical manner, leading to imposition of punishment of similar kind as the original petitioner.

10. That is also an additional ground for interfering with Annexure-1. The rationale and reasoning given in Hira Lal Choudhary also applies to the case of present petitioner.

11. Writ application is allowed. Annexure-1 dated 27.5.1996 is quashed especially since respondent State authorities have not denied the omission committed by the disciplinary authority.

12. It goes without saying that whatever benefit which is required to accrue to the legal heirs of the erstwhile petitioner by virtue of this order shall now accrue to them.

13. All such claim must be settled within a period of ten

weeks from the date of production of a copy of this order.

**(Ajay Kumar Tripathi, J)**

R.K.Pathak/-

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