

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14003 of 2001

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Nand Kumar Rana, Son of Late Banarsi Rana, Resident of Village Bhatolia, Police Station Ninapur, District Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Secretary to Government, Water Resources Department, Government of Bihar
3. The Joint Secretary to the Government, Irrigation Department, Government of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Siya Ram Sahi

Mr. Ranjan Kumar Singh

For the Respondent/s : Mr. Ashok Kumar Choudhary, AAG 13

Mrs Meera Singh, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-05-2015

Petitioner, a Junior Engineer, was punished vide order dated 24.8.2008 contained in Annexure- 12. Three punishments came to visit the petitioner. One was recovery of Rs.3.16 lakh. Second punishment was withholding of two increments with cumulative effect and the third punishment was non- payment of salary except subsistence allowance.

The long and short of the story is that on variation of certain stocks of iron rods and ingots as well as cement, which was being used for construction of what is known as Triveni Canal in the Bagaha sub division, a set of charges came to be drawn against the petitioner. The charges are Annexure 4/1. There were six charges in

all in relation to the basic facts indicated above. Enquiry was held at the level of a Chief engineer and the enquiry report is Annexure- 9 to the writ application.

Learned counsel for the petitioner submits that the enquiry report exonerated the petitioner of any wrong doing with regard to five charges. No finding of guilt was recorded. But with regard to charge no.4 petitioner was found partially guilty of omission and negligence.

The disciplinary authority issued a notice of disagreement which is Annexure- 10. Petitioner explained the position by offering his explanation by virtue of Annexure- 11. Still three punishments were imposed against the petitioner, which has been challenged.

The first contention is that the notice of disagreement is only a repetition of the charge and that is no disagreement. Law is well settled that the disciplinary authority does have power to disagree with the findings given by an enquiry officer but that disagreement must be on the evidence and material which came in the enquiry. From the evidence available on record a different conclusion could be reached and not what the enquiry officer found. It could be a case of some kind of a perverse conclusion as well by the enquiry officer but such a case has to be made out. Merely repeating the charges and showing that the disciplinary authority

disagrees with the finding may not do.

A reading of Annexure- 10 indicates that no reason as such has been given by the disciplinary authority as to why he will not agree with the decision of exonerating the petitioner of most of the charges. If that be so then merely because the disciplinary authority would not like to agree with the enquiry officer may not do.

The Court has gone through the report of the enquiry officer. The charge which led to imposition of punishment for recovery of Rs.3,16,300 is not established against the petitioner at all. The finding is that the so-called fraudulent indent had signature of two superior officers and the petitioner being junior most had no occasion to verify the authenticity of the indent. The superior authorities on the so-called fraudulent indent had already put their signature and ordered release of the iron rods which the petitioner complied. He cannot be saddled with the responsibility alone. Punishment on this charge, therefore, is perverse and is set aside.

However, the totality of the materials and findings towards omission and failure on the part of the petitioner to be diligent is made out. If that be so then the punishment of withholding of two increments with cumulative effect was required to be imposed. Such a punishment is not required to be interfered with.

The final punishment of non- grant of salary for the period of suspension falls foul of the decision already rendered in Mahabir Prasad v. State of Bihar, 1988 PLJR 82. Law is laid down as to what is required to be done for such punishment. The procedure of notice etc. has to be followed in terms of Rule 97 (3) of the Bihar Service Code. In absence of any material to show that such a procedure was followed or adopted before the third punishment came to be imposed, even this punishment is required to be quashed. The Court is not willing to remand the matter back for the reason that the petitioner has now superannuated.

Writ application is allowed to the extent indicated above.

(Ajay Kumar Tripathi, J)

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