

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6012 of 2004

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Pathak Veerendra, son of Late Satyadeo Pathak, resident of C-12, Ashiana Nagar, Phase- II, P.S. Shastrinagar, District Patna, presently posted as Assistant Engineer, Water Resources (Irrigation), Mechanical Sub- Division, Aurangabad, Camp- Sasaram

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner- cum- Secretary, Minor Irrigation Department, Government of Bihar, Patna
2. The Additional Secretary, Minor Irrigation Department, Government of Bihar, Patna
3. The Deputy Secretary, Minor Irrigation Department, Government of Bihar, Patna
4. The Accountant General, Bihar, Patna
5. The Commissioner- cum- Secretary, Water Resources (Irrigation) Department, Government of Bihar, Patna
6. The Under Secretary, Water Resources (Irrigation) Department, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr R.K.Sinha No.2

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 09-07-2015

Petitioner has now superannuated. He was an Assistant Engineer, working in the Minor Irrigation Department on deputation to do some work of construction of an Aahar, located at Surangapur in the district of Bhojpur. Villagers made complaint with regard to the quality of work as also that without work payment has been made. Yet another charge was that the earth work, which was done, was far less but more payment has been made. For the three set of charges, which has been crystallized in Annexure- 5, a full- fledged



enquiry was done. The enquiry report is in Annexure- 10 and petitioner was exonerated of all the three charges. Despite the above fact, a notice on the proposed punishment was issued to the petitioner on 8.6.1999, Annexure- 7 to the writ application, to which the petitioner offered his explanation. But two punishments came to visit him i.e. censure for the year 1986-87 and withholding of five increments with cumulative effect. It is this order of punishment dated 13.2.2014 (Annexure- 9), which is under challenge.

Submission of learned senior counsel is that even earlier for same set of charges, he was issued a show cause as would be evident from Annexure- 1. Matter was examined and enquired into and petitioner was given a clean chit which Annexure- 4 will certify but despite the above, a second enquiry was held, which was not permissible.

This part of the submission of the counsel for the petitioner is required to be negated. The documents available as various Annexures do not convince the Court that it was a regular enquiry which was held as such but this was part of an exercise on a kind of preliminary enquiry and not actually a formal enquiry.

The exercise was cursory and that could be the reason why a full- fledged enquiry subsequently came to be initiated. To that extent, it cannot be said that there was a second enquiry as such.



The second submission of law, however, does require consideration. Petitioner's counsel has taken me through the enquiry report contained in Annexure- 11. Findings are in favour of the petitioner that no guilt was established on any of the three charges. If that was so, in normal course of things, petitioner should have been exonerated. The alternative is that the disciplinary authority could very well disagree with the enquiry officer but for that he had to give a notice of disagreement indicating the materials culled out from the enquiry for such disagreement.

In the present case that procedure has not been followed at all. Annexure- 7, which is a notice on the proposed punishment, cannot be said to satisfy the requirement of a notice of disagreement.

The principle in this regard is well laid out and followed by courts for decades now. There is no second opinion as such on issue of requirement of issuance of notice on disagreement. Annexure- 7 cannot be said to be the notice of the kind. It is, therefore, held by the Court that the disciplinary authority has committed a serious breach of procedure, which violates the rights of the petitioner, by imposition of punishment, which should not have visited him, in the above stated circumstance of exoneration by the enquiry officer.

On the above stated ground, the Court is satisfied that

Annexure- 9 suffers from a vice and the principle laid down way back in the case of *Punjab National Bank vs. Kunj Behari Misra, reported in (1998) 7 SCC 84*. Therefore, Annexure- 9 is quashed.

Writ application is allowed. Petitioner will be now entitled to his post retiral dues as if the punishment order did not visit him at all.

(Ajay Kumar Tripathi, J)

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