

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12680 of 2008

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Dhirendra Prasad Srivastava son of late Baidyanath Prasad, Resident of Mohalla
Imlichatti, PS Town Thana, District Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
3. The Secretary, Road Construction Department, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. N. Pathak

For the Respondent/s : Mr. (SC15)

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-04-2015

Order of punishment is contained in Annexure- 2, which is dated 13.9.2004. The punishment is withholding of two increments with cumulative effect, censure to be entered for the year 2000-2001 and nothing except subsistence allowance would be paid during the period of suspension.

A detailed enquiry was held by the enquiry officer whose report is contained in Annexure- 4 dated 8.1.2002. On none of the charges, enquiry officer has held the petitioner guilty. There is no material on record to show that any notice of disagreement was given to the petitioner before the order of punishment contained in Annexure- 2 came to be passed. Law is well settled that if the disciplinary authority wants to disagree with the enquiry officer, he surely can do so but that can also be done after the notice of

disagreement with the evidence and material, which forms the basis of such disagreement, has to be communicated to the petitioner. If the same has not been done and order of punishment has been imposed then obviously the punishment order is vulnerable. No counter affidavit has been filed on behalf of the petitioner even though the writ application remained pending for the last seven years.

In absence of any rebuttal of the above position, the Court is left with no option but to quash the impugned order contained in Annexure- 2, dated 13.9.2004. Since the petitioner has already superannuated, the Court is not inclined to give any indulgence to the respondent authorities to effect notice at this juncture.

Writ is allowed.

(Ajay Kumar Tripathi, J)

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