

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14517 of 2015

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Rajendra Sardar, Son of late Rameshwar Sardar, resident of Village - Charae, P.S Chhatapur District Supaul.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Joint Secretary-cum-Officer on Special Duty-cum-chief Vigilance Officer, Building Construction Department, Government of Bihar, Patna
5. Engineer-In-Chief-Cum-Additional Secretary-Cum-Special Secretary, Building Construction Department, Government of Bihar, Patna
6. Engineer-in-chief-cum-Additional Commissioner -cum-Special Secretary, Road Construction Department, Bihar, Patna.
7. The Under Secretary, Building Construction Department, Government of Bihar, Patna
8. The In-charge officer, Building Construction Department, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.

Mr. Rajesh Kumar, Advocate,

Mr. Premshankar Kumar, Advocate.

For the Respondent/s : Mr. Satyadeo Kumar, SC5

Mr. Bijay Kumar Pandey, AC to S.C.5

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 17-12-2015

The petitioner retired as Superintending Engineer (Building Division), Building Construction Department. The Petitioner seeks quashing of the order, dated 04.08.2015 passed by respondent no.4, whereby he has inflicted punishment of permanent withholding of 5% pension amount.

The petitioner was proceeded departmentally in the



year 2003 for his act of omission and commission, while he was posted as Executive Engineer, N.R.E.P. Muzaffarpur in the year 1996-97. The petitioner was charged for recommending the scheme of road construction between Nayagaon (Aurai block) to Dharaherwa totaling Rs. 48,04,700/- without following the appropriate guidelines. The petitioner was exonerated in the departmental proceeding. However, the disciplinary authority disagreeing with the report of the Inquiry Officer, issued a composite notice on 14.09.2009 (Annexure-6) both disagreeing with the inquiry report as well as asking show cause as to why appropriate punishment be not imposed. The petitioner filed his show cause reply whereupon and on consideration of the same, he was awarded punishment vide order dated 14.12.2010 (Annexure-10).

The petitioner challenged the composite show cause notice dated 14.09.2009 as well as the impugned punishment dated 14.12.2010 (Annexure-10) in C.W.J.C. No.17520/2011.

He contended before the Court that the composite notice dated 25.09.2009, whereby the disciplinary authority while disagreeing with the inquiry report asked show cause as to why appropriate punishment be not imposed was bad in law..



The learned Singh Judge vide order dated 11.11.2013 accepted the contention of the petitioner that the composite notice was not in accordance with law and if the disciplinary authority disagrees with the inquiry report, he may issue fresh show cause on the point of disagreement and only after consideration of the cause/reply given and not being satisfied with such reply, could have issued second show cause for the purpose of inflicting punishment. On remand, the authorities rectified its procedural mistake and issued a fresh notice, disagreeing with the inquiry report seeking petitioners response with respect to the findings contained therein. The petitioner filed his reports. The disciplinary authority not satisfied with the reports, rejected his show cause reply and proceeded to withhold 5% of the pension on permanent basis. The petitioner has challenged the order of punishment being violative of due procedure of law prescribed by Hon'ble Apex Court.

In my view, the disciplinary authority is within its ambit to reject the show cause if the same is not satisfactory, and to arrive at a finding of guilt. However, while arriving at the finding of guilt, the disciplinary authority could not have proceeded to inflict punishment straight away. It was again required to give show cause with respect to quantum of

punishment as decided in the case of ***Lav Nigam Vs. Chairman & MD, ITI Ltd. and another*** reported in 2006 (9)SCC 440, particularly paragraph 10 of the said judgment, which is quoted hereinbelow:-

“Para 10:- The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Therefore, the employee would again have to be served with a notice relating to the punishment proposed.”

Having not served with a notice relating to the punishment proposed, the impugned order of punishment of permanent withholding of 5% of pension amount is not sustainable in law and is accordingly set aside. The matter is remitted to the authority to proceed afresh by asking a fresh show cause notice on the quantum of punishment.

The writ application is allowed to the aforesaid extent.

(Samarendra Pratap Singh, J)

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