

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17771 of 2008

Arjun Prasad Sinha, son of late Brahmdeo Prasad, resident of Mohalla – Abhiyantnagar, House No. B/1, Ashiananagar, P S – Rajeev Nagar, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Valmikinagar, West Champaran.
5. Superintending Engineer, Tirhut Canal Circle, Bettiah, West Champaran.
6. The Executive Engineer, Done Canal Division Ramnagar, Bettiah, West Champaran.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. SATISH CHANDRA JHA 3

For the Respondent/s: Dr. MANKESHWAR TIWARI, AC to AAG 5

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 14-05-2015

Petitioner has recently superannuated. At the relevant time he was the Executive Engineer posted at what is known as Done Canal Division, Ramnagar, West Champaran.

2. Matter relates to the work done with regard to strengthening of the said canal as part of Gandak Project. The charges are contained in Annexure-3 to the writ application.

3. The first charge relates to the manner in which contract was awarded to a particular contractor in violation of the Vigilance Department's communication No. 2820 dated 13.9.91. The second charge relates to the quality of the bricks used in the canal which obviously was inferior as per the department and it had adverse effect on the quality of the work so done and carried out.

4. The enquiry report is Anneuxre-6. The stand of the petitioner is

that the enquiry officer has exonerated the petitioner from both the charges. If that was so, petitioner was required to be exonerated and not punished in terms of Anneuxre-1 dated 6.3.2008.

5. The disciplinary authority, however, did not agree with the finding of the enquiry officer and issued a notice of dissent as would be evident from Anneuxre-8. Petitioner did offer his explanation, tried to justify the quality of the bricks so used and how similar kind of bricks have been used in the past without any negative fall-out on his predecessors and other authorities. Such explanation obviously did not find favour with the disciplinary authority and the order of punishment of 'censure' for the year 2004-2005, withholding of 2 increments without cumulative effect as well as non-payment of salary for the period of suspension except subsistence allowance came to be passed. Subsequently the appeal of the petitioner has also been rejected which has been challenged in IA No. 3782 of 2015 and the said order is Anneuxre-10.

6. I A No.3782 is allowed.

7. The net effect is that petitioner wants quashing of Annexure-1 and Anneuxre-10.

8. Many a things have been urged on behalf of the petitioner. His main thrust of the argument is with regard to the second set of charge relating to the quality of the bricks used for strengthening the canal. There is no dispute that the bricks which were tested had a maximum crushing strength of 79.32 Kilogram per square centimeter and minimum strength was 70.30 Kilogram per square centimeter. The allegation against the petitioner is that the minimum crushing strength of such bricks which were required to be used should not have been less than 90 Kilogram per square centimeter.

9. Argument has been made on behalf of the petitioner that no



evidence had been produced on behalf of the department. This is one of the reasons for the enquiry officer to exonerate the petitioner. Anneuxre-8 series is the notice to the petitioner of disagreement. The reason for dissenting is obviously based on standards which is the accepted norm across the industry. The contract awarded and the work required to be done departmentally do have to satisfy the quality of materials which was required to be used. There are standards with regard to the materials and the standard is accepted norm across the industry. The standard required for crushing strength per Kilogram/per centimeter is said to be 100 but it should not be less than 90 for the first quality bricks. There is no dispute that the bricks which were tested had a crushing strength between 79.32 and 70.30. Such a wide variance between two standards by itself is a clear indicator of the quality of the bricks used for execution of the contract or the work assigned to the petitioner. The justification that similar kind of bricks have been used in the past and others were not proceeded against is fallacious kind of submission because petitioner has to answer for the charge brought against him and the omission committed for maintenance of standard of quality of bricks. These works are meant for generation one to next. Canals are not created for a season. They are supposed to last at least for a significant period of time. If the finding with regard to quality of bricks and the test which yielded the result indicated an inferior quality of work then a minimum of punishment which was required to be given has been given. The Court therefore is not satisfied that it was not a case for disagreement or punishment.

10. The impugned order contained in Anneuxre-1 dated 6.3.2008 is not required to be interfered with. However, one of the punishment which is withholding of salary for the period of suspension seems to have been passed in omission of without following Rule 97(3) of the Bihar Service Code.

11. Judgments have been rendered by this Court and even by a Division Bench as to what is required to be done with regard to such punishment. If such a procedure is not followed, which is not evident from the pleading or the counter affidavit of the respondents, the 3rd punishment with regard to withholding of salary for the period of suspension is hereby quashed.

12. Writ application is allowed to the extent indicated above. No interference is warranted with other two punishments.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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