

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13678 of 2007

Rama Kant Singh, son of Late Baleshwar Singh, resident of Biral, Post-Aral, P.S. Daudnagar, District- Aurangabad

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department, having his office in Vishwesharaiya Bhawan, Bailey Road, P.S. Shastrinagar, District- Patna
2. The Deputy Secretary-cum- Chief Vigilance Officer, Road Construction Department, Special Secretary-cum- Deputy Secretary, Road Construction Department, Patna
3. Special Secretary-cum- Deputy Secretary, Road Construction Department, Vishwesharaiya Bhawan, P.S. Shastrinagar, District- Patna
4. Engineer-in-Chief, Road Construction Department, Vishwesharaiya Bhawan, P.S. Shastrinagar, District- Patna
5. District Magistrate, Jehanabad

.... Respondents

Appearance :

For the Petitioner/s : Mr. RUPAK KUMAR

Mr. Nishant Kumar

For the Respondent/s : Mr. AC to AAG-10

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-03-2015

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Heard learned counsel for the petitioner and learned AC to AAG-10.

2. The petitioner, invoking writ jurisdiction of this Court under Articles-226 of the Constitution of India, has prayed for quashing of an order dated 29.12.2006 (Annexure-1 to the writ petition), whereby the disciplinary authority has inflicted punishment of (i) censure and (ii) it was indicated that save and except subsistence allowance, the petitioner shall not be entitled to get anything. This is



the second occasion for the petitioner to approach this Court. Earlier, the petitioner had filed a writ petition vide C.W.J.C.No.5832 of 2004 assailing the order of punishment, which was similar in nature before this Court. Earlier, a plea was taken that in the departmental enquiry, the conducting officer had exonerated the petitioner. However, the disciplinary authority though had issued second show cause notice, but not assigned reason for differing with the enquiry report and, as such, this Court vide its order dated 17.08.2005 quashed the order of punishment. However, this Court granted liberty to the respondents to proceed afresh from the stage of giving notice with reason of difference to the petitioner and pass order in accordance with law.

3. Learned counsel for the petitioner submits that after the order of the writ court i.e. 17.08.2005 passed in C.W.J.C.No.5832 of 2004 (Annexure-21 to the writ petition), the disciplinary authority again without assigning any reason for differing with the enquiry report issued second show cause notice vide Annexure- 13 to the writ petition on 12.08.2006. Learned counsel for the petitioner has taken the Court to Annexure-13 to the writ petition and submits that in second show cause notice issued subsequent to the order of the writ court, there is all similarity with earlier show cause i.e. Annexure-10 to the writ petition. However, the disciplinary authority has amended the second show cause notice by way of incorporating a sentence that



without the consent of the competent authority in respect of approved estimate, the work was not done in regular manner by the petitioner. It was argued that the amendment in the second show cause issued after the order of the writ court was different from the memo of charge. Moreover, it has been indicated that the disciplinary authority had tried to show some new fact, but in the second show cause notice, nothing has been indicated to show the reason for differing with the enquiry report submitted by the conducting officer, whereby the petitioner was exonerated by the conducting officer. It has also been argued that second punishment i.e. forfeiture of salary during suspension period is contrary to Rule 97 of the Bihar Service Code and also contrary to the law laid down by this Court, particularly in a case reported in 2006(4) PLJR 514 Dinesh Prasad Vs. State of Bihar . On the aforesaid ground, it has been pleaded that the punishment order i.e. Annexure-1 is not sustainable in the eye of law and is fit to be set aside.

4. Learned State Counsel opposing the prayer of the petitioner submits that in second show cause notice, the disciplinary authority had indicated the reason for differing with the enquiry report and, as such, on this ground alone, the order of punishment may not be set aside. The State Counsel has also referred to averments made in the counter affidavit and submits that the writ petition is fit to be

rejected.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that in the departmental enquiry, the conducting officer had exonerated the petitioner in its enquiry report and, thereafter, the disciplinary authority, earlier vide Annexure-10 to the writ petition, had issued second show cause notice. Thereafter, the punishment order was passed. However the order of punishment was set aside by this Court vide Annexure-21 to the writ petition solely on the ground that the disciplinary authority had not assigned reason for differing with the enquiry report to enable the petitioner to persuade the disciplinary authority to justify the enquiry report. Of course, after the order of the writ court, second show cause notice was again issued vide Annexure-13 to the writ petition, however on perusal of second show cause notice i.e. Annexure-13 to the writ petition, the Court is satisfied that the disciplinary authority has not whispered about the reason for differing with the enquiry report. Once in a departmental enquiry, the conducting officer exonerates the delinquent, the disciplinary authority is, though, competent to issue second show cause notice differing with the enquiry report, but in that event, it is mandatorily required to assign succinctly reason for differing with the enquiry report. On perusal of Annexure-13, the Court is satisfied that

nothing has been indicated to show the reason for differing with the enquiry report. Almost similar stand has been taken, which was earlier taken vide Annexure-10 to the writ petition.

6. In view of facts and circumstances, particularly the fact that no plausible reason has been assigned regarding differing with the enquiry report, the order of punishment is liable to be set aside. Accordingly, the order of punishment i.e. Annexure-1 to the writ petition is hereby set aside.

7. The writ petition stands allowed.

(Rakesh Kumar, J)

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