

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3356 of 2015

=====

1. Choudhary Vijay Kumar Sharma S/o Late jagdish Sharma Resident of Village Jhakhra, P.S. Pipra Kothi, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary-cum-Commissioner Department of Water Resources, Sinchai Bhawan, Patna.
3. The Deputy Secretary, Water Resources Department, Govt. of Bihar.
4. The Engineer-in-Chief, Water Resources Department, Sinchai Bhawan, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Pandey

For the Respondent/s : Mr. Prabhu Narayan Sharma

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-06-2015

23.06.2015

Heard learned counsel for the parties.

In the second round of litigation, petitioner has assailed the order, dated 08.07.2014, passed by the Secretary, Water Resources Department, Government of Bihar. This order has been passed in compliance of the direction issued by a Division Bench in L.P.A. No. 374 of 2013, decided on 28.06.2013

Petitioner was posted as Junior Engineer in the office of Swarn Rekha Canal Division in Chandil now in the State of Jharkhand. The period of posting is between 1989-1992. During this period work was assigned to one M/s Arvind Techno Engineers Ltd. to do the lining of the canal from 0.00 to 16.246 k.m. and

petitioner was saddled with the responsibility to supervise the work. Later on, a dispute arose with regard to quality of work performed by the Contractor. Matter was referred to an Arbitrator.

It is the stand of the counsel for the petitioner that during the period of arbitration itself a flying squad made a visit, made inspections, prepared reports and also certified that the quality of the work with regard to thickness of the lining of the canal was not up to the prescribed standard laid down in the contract. It is said that major financial loss to the State Government occurred. Ultimately, an award was made in favour of the Contractor, which was enforced as well on execution and payment came to be made. So far as this petitioner and some other persons who were posted in varying capacity as Engineers were moved departmentally. Enquiry was held. Initially a punishment of dismissal was passed, which was modified to deduction of the pay-scale of the petitioner to the initial scale. Petitioner assailed the said order by filing C.W.J.C. No. 6358 of 2006. The order passed by the Learned Single Judge is Annexure-12.

After all the submissions and discussions made in the said writ application, the Learned Single





Judge set aside the order passed by the appellate authority on the ground that it was a non-speaking order. In appeal filed by the State order of Learned Single Judge was upheld but the Division Bench again stuck to the issue on the legality of the order passed by the appellate authority. It gave a direction that the appellate authority will pass a fresh reasoned and speaking order in accordance with law.

Annexure-14, which is under challenge, is in compliance of the said direction of the Division Bench. This time a detailed consideration has been made and the order of punishment stands.

Counsel for the petitioner has many a things to say with regard to the manner in which the enquiry was held and how he was prejudiced by non-furnishing of certain documents, evidence etc. etc.

With due respect such submissions cannot now be entertained by the Court at this belated hour. The earlier round of litigation culminated into a specific order with regard to the legality of the appellate order. The Division Bench also confined itself to the said issue alone and did not say anything with regard to the correctness of the order of punishment and the findings which did emerge in the order of punishment passed by

the disciplinary authority. The Court, therefore, would not encourage the counsel for the petitioner to reopen the ambit of judicial review as if it is a de novo exercise of judicial scrutiny against the disciplinary authorities' decision.

The Court has gone through the appellate order, contained in Annexure-14, dated 08.07.2014. The objections raised by the petitioner in memo of appeal has been crystallized which will be evident from page 2 of the impugned order and the reasoning and rational for rejecting the same follows thereafter. A reading thereof does not lead this Court to a conclusion that the same seems to be irrational or perverse on the face of the evidence which has been dealt with or the reason for the conclusion so reached.

If the earlier appellate order was set aside on the ground that the same was cryptic, showing non-application of mind, atleast this order does not suffer the said vice. The findings are against the petitioner. The appellate authority has refused to reduce the punishment or exonerate the petitioner for the reasons so assigned now, which learned counsel for the State has duly supported by way of a counter affidavit, explaining the background leading to the passing of the

W E F
N O T

impugned order. The impugned orders do not require any interference on that count. Matter cannot be reopened on any other ground in view of the two decisions of the Learned Single Judge and the Division Bench.

Writ application is required to be dismissed. It is dismissed.

(Ajay Kumar Tripathi, J.)

SKM/-

U			
---	--	--	--