

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14532 of 2015

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Parmanand Yadav, son of late Gulabi Prasad Yadav, resident of village
Khawa, P.S. and District Banka

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bishweshwaraiya Bhawan, Bailey Road, Patna
2. The Engineer-in-Chief, cum Addl. Commissioner cum Special Secretary, Road Construction Department, Bihar, Patna
3. The Secretary, Rural Works Department, Bishweshwaraiya Bhawan, Bailey Road, Patna
4. The Chief Engineer III, Road Construction Department, Bihar, Patna
5. The Superintending Engineer, Rural Works Department, Works Circle, Muzaffarpur
6. The Executive Engineer, Rural Works Department, Works Division, Hajipur
7. Sri Ravi Shankar Prasad Singh, the Superintending Engineer cum Inquiry Officer, Road Construction Department, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kripa Nand Jha

For the Respondent/s : Mr. Nadeem Seraj- Gp20

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 14-09-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads
as follows:

“1(i) For issuance of an appropriate direction, order or writ in the nature of certiorari quashing the memo no. 5151 dated 14.8.2013 (Annexure 8) by the Disciplinary Authority as well as the Appellate order vide memo no. 2944(E) dated 14.7.2014 (Annexure 9) awarding punishment to the petitioner reverting him to the lowest stage of scale of Junior Engineer without any proved charge against the petitioner.

(ii) For holding and declaring that the petitioner is entitled

to get the due promotion to the next higher scale with all benefits, allowed to the other similarly situated persons from the due date or at least from the date his juniors were promoted to the post of Assistant Engineer i.e. w.e.f. 1993.”

At the outset Mr. Kripanand Jha, learned counsel for the petitioner, in view of the objection raised by the learned counsel for the State does not intend to press relief No.1(ii) quoted above as with regard to seeking declaration of promotion of the petitioner.

That being so, this application is confined to the relief sought in paragraph no.1(i) assailing the correctness of the order of punishment against the petitioner dated 14.8.2013 passed by the Engineer-in-Chief in capacity of the disciplinary authority as also the appellate order dated 14.7.2014 passed again by the Engineer-in-Chief in capacity of the appellate authority.

Mr. Jha had raised a number of issues while assailing both the impugned orders but one which would immediately attract attention of this Court and in fact go to the root of the matter is that the appellate order has been passed by the same authority, namely, Engineer-in-Chief, who had passed the original order. From such appellate order dated 14.7.2014 it is also clear that the petitioner's appeal dated 17.9.2013, as contained in Annexure 9,

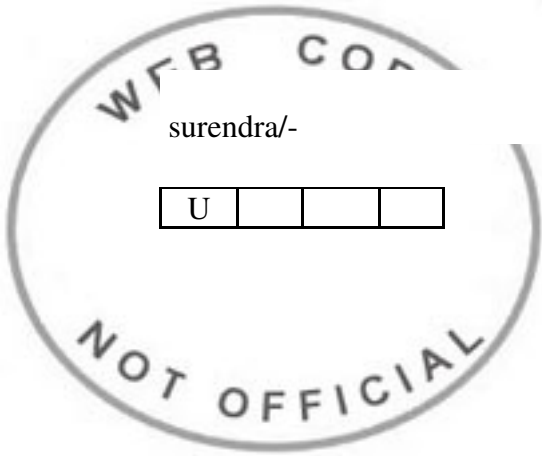


had been disposed of. Such appeal was addressed to the Secretary of the Department being the appellate authority of the orders passed by the Engineer-in-Chief being the appointing cum disciplinary authority of the post of Junior Engineer.

In that view of the matter, this Court would find that the impugned order dated 14.7.2014 describing either the appeal of the petitioner dated 17.9.2013 by an application for review (Punarvichar) or its disposal by the Engineer-in-Chief is completely in violation of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, wherein the appeal has to be disposed of by the higher authority. For the post of Junior Engineer when the Engineer-in-Chief himself is the appointing cum disciplinary authority, he could not have disposed of the appeal of the petitioner in capacity of the appellate authority. There can be in fact no appeal from caesar to caesar.

Thus, on this ground alone the impugned appellate order dated 14.7.2014 is quashed and the matter is remitted back to the Secretary/ Principal Secretary of the Road Construction Department, who shall now dispose of the appeal of the petitioner, as contained in Annexure 9, afresh by a speaking order within a period of four months from the date of receipt/ production of a copy of this order.

This application to the extent indicated above is allowed.



(Mihir Kumar Jha, J)