

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2438 of 2014

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Bal Krishna Pandey, Son of Late Gopal Pandey, Resident of Main Road,
Shastrinagar, P.O. & P.S.- Jehanabad, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Bikas Bhawan Secretariat, Bailey Road, Patna.
2. The Additional Secretary, Road Construction Department, Government of Bihar, Bikas Bhawan Secretariat, Bailey Road, Patna.
3. The Chief Engineer, Road Construction Department, Government of Bihar, Bikas Bhawan Secretariat, Bailey Road, Patna.
4. The Superintending Engineer, Road Construction Department, Government of Bihar, Magadh Circle, Near Mirza Galib College, Town and District- Gaya.
5. The Executive Engineer, Road Construction Department, Government of Bihar, Magadh Circle, Near Mirza Galib College, Town and District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
Mr. Varun Kumar, Advocate

For the Respondent/s : Mr. Pawan Kumar, AC to GA-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-10-2016

Heard Mr. Ashok Kumar Mishra, learned counsel
appearing for the petitioner and Mr. Pawan Kumar, learned
Assisting Counsel to Government Advocate No.1 for the State.

In the nature of the order which this Court proposes to
pass it would not require to delve deep into the merit of the case.
Suffice it to say that the order of punishment bearing Memo No.568
dated 27.6.2011 passed by the Superintending Engineer, Road
Construction Department, Magadh Road Circle, Gaya whereunder
the petitioner is visited with the penalty of stoppage of one



increment with cumulative effect under rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') impugned at Annexure-10, is questioned by the petitioner on amongst other grounds also on the ground that copy of the enquiry report was never handed over to the petitioner.

It is taking note of the submission that this Court vide order passed on 21.9.2016 required the learned State Counsel to verify the following, from the records:

- (a) Whether the departmental enquiry has been conducted by the enquiry officer ex-parte? and
- (b) Whether copy of the enquiry report was served on the petitioner?

Learned State Counsel has returned with the proceedings in the departmental proceeding to submit that while the answer to issue (a) posed is in the negative because the petitioner has participated in the disciplinary proceeding but in so far as the issue (b) is concerned, it is an admitted position that the copy of the enquiry report was not served on the petitioner although the records show that he had the knowledge about the same.

Having heard learned counsel for the parties and considering the undisputed position that the order imposing a major



penalty has been passed by the Superintending Engineer without service of enquiry report as mandated under rule 18 of ‘the Rules’ the order of penalty bearing Memo No.568 dated 27.6.2011 impugned at Annexure-11 is accordingly quashed and set aside. The matter is remitted to the Superintending Engineer, Road Construction Department, Magadh Road Circle, Gaya to proceed afresh but in accordance with law and only after service of copy of the enquiry report on the petitioner.

The writ petition is allowed subject to the stipulations aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-10-2016
Transmission Date	NA