

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.812 of 2011

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1. Raj Kishore Prasad S/O Ram Janam Prasad Resident of Village- Udarchak, P.S-
Bikram, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. The Deputy Secretary (Vigilance), Road Construction Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Adv.
For the Respondent/s : Mr. Chitranjan Singh, PAAG2
Mr. Niranj Kumar Sinha, A.C. to PAAG 2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-09-2016

Heard Mr. Prabhu Nath Pathak and Mr. Niraj Kumar Sinha,
A.C. to PAAG 2.

In the nature of the dispute as it stands at present it would not
be required for this Court to enter into the merits of the case.

With the consent of the parties the writ petition has been heard
and is being disposed of at the admission itself.

The petitioner filed this application for the following reliefs:

- “(i) For quashing Notification containing Memo No.4824(S) dated 01.04.2010 issued by the Joint Secretary, Road Construction Department, Bihar, Patna by which the punishment of (A) censure for the year 2009-10,(B) withholding of three increments without cumulative effects, and (C) further decision for depriving from salary for suspension be taken separately has been inflicted against the Petitioner in the departmental proceeding

(Annexure-9).

- (ii) For quashing the Notification dated 08.06.2010 containing Memo No. 8599 (S) dated 08.06.2010 issued by the Joint Secretary, Road Construction Department, Bihar, Patna by which the Petitioner has been deprived from salary for the period of suspension except subsistence allowance in the said departmental proceeding (Annexure-11).
- (iii) For quashing the Notification dated 08.06.2010 containing Memo No. 8601 (S) dated 08.06.2010 issued by the Joint Secretary, Road Construction Department, Bihar, Patna by which the review petition filed by the petitioner has been rejected and impugned Notification of punishment dated 01.04.2010 has been affirmed. (Annexure-14).”

I have heard Mr. Pathak learned counsel for the petitioner and Mr. Sinha for the State and as I have already observed, I would not be required to enter into the merits of the case. Suffice it to say that certain irregularities was alleged against the petitioner in respect of the construction of Hajipur-Lalganj-Vaishali road in between 23 kilometers to 33 kilometers which according to the Executive Engineer was deficient in quality inasmuch as Grade-II and Grade-III work had not been completed before pre-mixing carpeting. Initially the contractor was noticed on 21.10.2009 vide Annexure-1 which was followed by a notice to the petitioner as well on 31.10.2009 vide Annexure-3. The petitioner submitted his reply to the Executive Engineer on 10.11.2009 present at Annexure-6. Perhaps, it was not to the satisfaction of the Executive Engineer because it resulted in issuance of a chargesheet. Vide notification bearing Memo No.13251



dated 17.11.2009, the petitioner was suspended under Rule 9(1)(a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'). By the same notification, the Chief Engineer was appointed as the Conducting Officer. The suspension order at paragraph 4 mentions that a chargesheet is being separately constituted, a copy of which is enclosed with the suspension order at page 43 of the proceedings and which charges the petitioner in the following manner:

- (i) Not taking sufficient interest in the construction of the road in question; and
- (ii) Trying to influence payment of bill to the contractor.

The petitioner filed his reply to the charge which is exhaustive and a copy of which is present at Annexure-8.

The petitioner has filed a rejoinder enclosing certain file notings which includes a recommendation to appoint the Chief Engineer (North) as the Enquiry Officer and the Prashakha Padadhikari-II as the Presenting Officer, however, no formal orders was issued thereafter.

This exercise has finally culminated in the notification bearing Memo No.4828 dated 1.4.2010 whereby the penalty of censure and stoppage of 3 annual increments with non cumulative effect has been imposed and in so far as the period under suspension is concerned, it has been mentioned that it could be separately dealt with. The



petitioner filed a review application present at Annexure-10 and which has been rejected vide notification bearing Memo No.8602 dated 8.6.2010 impugned at Annexure-14. In between, the petitioner was show caused as to the determination of the period under suspension, and it is in consideration of his reply present at Annexure-13 dated 26.4.2010 that the orders have been passed restricting his pay and allowance to the subsistence allowance drawn by him in the suspension period, although the period is to be treated in service period.

Although extensive arguments are advanced by Mr. Pathak to question the penalties in question present at Annexures-9 and 14 as well as to question the order restricting his pay and allowances to the subsistence allowance impugned at Annexure-11 but as I have observed above, I would not be required to enter into the merits of the contest at this stage in view of the apparent procedural default committed by the Disciplinary Authorities in the decision making exercise.

Rule 19 of the Rules in question provides for a procedure for imposing minor penalties and which is quoted hereinbelow for ready reference:-

“19. Procedure for imposing minor penalties.- (1) Subject to the provisions of sub-rule (3) of rule 18, no order imposing on a government servant any of the penalties specified in clauses (i) to (v) of rule 14 shall be made

except after –

- (a) informing the government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal ;
- (b) holding an enquiry in the manner laid down in sub-rules (3) to (23) of rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary:
- (c) taking the representation, if any, submitted by the government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary.”

A cursory glance at the provisions underlying Rule 19(1) would show that there is a twin procedure provided for imposition of minor penalty i.e. (a) a summary procedure in which an order of penalty imposing minor penalties is to be passed simply on a show cause and on receiving representation from the Government servant concerned. In other words, it is in consideration of a representation against a proposed action that an order of minor penalty can be passed.

The second option available under the said rule is left at the discretion of the disciplinary authority, to follow the exhaustive procedure as provided in Rule 17(3) to (23) of ‘the Rules’ which are in connection with the procedure to be followed for imposing a major penalty. The discretion thus is with the disciplinary authority as to the procedure which he would be following for imposing minor penalty.



In so far as the present case is concerned, the disciplinary authority has decided to go with the exhaustive procedure provided under Rule 17 of 'the Rules' which is confirmed from the chargesheet present at Annexure-7 which clearly stipulates initiation of a departmental proceedings. It is clear that the disciplinary authority in the present case has exercised his discretion to follow the exhaustive procedure as per Rule 19(1)(b) of 'the Rules'.

In my opinion, once a discretion has been exercised by the disciplinary authority to follow Rule 19(1)(b) of 'the Rules' by service of a chargesheet, appointment of Conducting Officer and Presenting Officer then the disciplinary authority cannot be permitted to abandon the process mid way and adopt the shorter route for imposing the penalty merely in consideration of the show cause reply filed by the petitioner as against the memo of charge. In fact even the summary procedure is left half way for there is no show cause in the manner stipulated under Rules for this self contained procedure. In my opinion, apart from the fact that neither of the two procedures stands satisfied in the present case, once the disciplinary authority has taken recourse to the exhaustive procedure by the service of chargesheet on the petitioner and by drawing a disciplinary proceedings, the disciplinary authority is bound by the provisions to follow the exhaustive procedure and not having done so, the orders impugned

have become unsustainable. Since the procedural infraction as noted above is sufficient to strike down the order of penalty, the order restricting the pay and allowances of the petitioner for the suspension period impugned at Annexure-11 also follows suit.

For the reasons and discussion aforementioned, the order of penalty passed by the disciplinary authority bearing Memo No.4824(S) dated 01.04.2010 together with the order in review dated 08.06.2010 containing Memo No. 8602 (S) dated 08.06.2010 impugned at Annexures- 9 and 14 to the writ petition along with the order bearing Notification dated 8.6.2010 whereby the pay and allowance of the petitioner have been restricted to his subsistence allowance impugned at Annexure 11, are quashed and set aside. The writ petition is allowed. The consequences shall follow. However, the disciplinary authority would not be precluded to proceed afresh but in accordance with law, if so advised in the matter.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	
CAV DATE	
Uploading Date	7.10.16
Transmission Date	