

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15508 of 2007

Arjun Paswan, Son of Late Chhotan Paswan, resident of Village- Paroha, P.S. Manpur, District- Nalanda, at present Executive Engineer, Road, Design and Planning Division No.1, Patna, Advance Planning, Road Construction Department, Patna and Incharge/Acting Superintending Engineer, National Highway Circle, Bihar, Patna.

.... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. Joint Secretary, Road Construction Department, Government of Bihar, Patna
4. Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna

.... .. Respondents

Appearance :

For the Petitioner/s : Mr. Rajendra Prasad, Sr. Advocate
: Mr. Pramod Kumar, Advocate
: Mr. Ritesh Kumar, Advocate
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-5
: Mr. Mankeshwar Tiwari, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 04-01-2016

Heard learned counsel for the petitioner and the learned Additional Advocate General No.5.

2. The petitioner was appointed as Junior Engineer and was promoted to the post of Assistant Engineer, Road Construction Department in the year 1983. He was departmentally proceeded for making excess payment in the year 1994. The enquiry officer submitted a report, dated 13.11.1996.

3. It is the case of the petitioner that the enquiry

report exonerated him, whereas the stand of the State is that the enquiry report did not fully exonerate him. On the basis of the report, the department passed an order directing recovery of Rs.2,24,120/- and also awarded a remark of censure.

4. The petitioner being aggrieved, challenged the order of punishment in C.W.J.C. No. 11228 of 2002. A learned Single Judge noticed that the disciplinary authority without differing with the findings recorded in the enquiry report proceeded to award punishment. The learned Single Judge, as such held that the procedure adopted was not in accordance with law, as it was incumbent upon the disciplinary authority to record his tentative reasons for disagreement and seek petitioner's response to the same, which was not done in the instant case. However, the learned Single Judge vide order dated 04.04.2003 directed the disciplinary authority to proceed and pass final order in accordance with law. The disciplinary authority was directed to issue show-cause, to which the petitioner was to file his reply within two weeks, where after the final order was to be passed after further a period of four weeks.

5. It appears that a show-cause notice was issued on 13.09.2003. The petitioner filed his show-cause on 21.11.2003 (Annexure-12 and 13 to the reply to the counter affidavit). However, no final order was passed in the matter and it was only on



23.05.2007/25.05.2007 (Annexure-11 to the writ application), that the disciplinary authority decided to start a fresh enquiry, as the earlier enquiry was defective. It is relevant to state here that in terms of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, no fresh enquiry could have been started and only further enquiry was permissible. Even after issuance of resolution dated 23.05.2007 (Annexure-11) no enquiry was held and the petitioner ultimately superannuated on 31.03.2009. A proceeding under Section 43 (b) of the Bihar Pension Rules was started on 11.12.2009, even that has not concluded up till now.

6. More than two counter affidavits have been filed on behalf of the State. The respondents have tried to explain the delay. They submit that the conducting officer of the departmental enquiry sought measurement book from the concerned Superintending Engineer and as the same was not received, the proceeding got delayed. Furthermore, criminal case has been instituted against the officials on account of whose lapse, the required documents could not be placed in the proceeding.

7. The petitioner has sought quashing of the order dated 23.05.2007 directing fresh enquiry, which was subsequently converted into a proceeding under Section 43 (b) of the Bihar Pension Rules.



8. I find that though a show-cause reply was filed in the year 2003, but no final order was passed in the matter and only in 2007 the respondents directed for fresh enquiry, which did not proceed and the petitioner retired on 31.03.2009. The proceeding was converted under Section 43 (b) of the Bihar Pension Rules only on 11.12.2009. Furthermore, though more than eight years have passed, no final order has been passed in the proceeding under Section 43 (b) of the Bihar Pension Rules.

9. Moreover, this Court vide order dated 04.04.2003, passed in C.W.J.C. No. 11228 of 2002 directed that if any show-cause notice is issued, the petitioner would file his reply within two weeks and the disciplinary authority would conclude the proceeding within four weeks from the date of receipt of the show-cause.

10. Even after efflux of 12 years, the department has not passed final order in the matter. The writ application itself was filed in the year, 2007, and the respondents could have passed final order even during the pendency of this writ application. In my view to allow any further time, in spite of specific direction of this Court dated 04.04.2003 to pass final order within six to eight weeks of it, would amount to undoing the Court's order and to subjecting one to unnecessary harassment and unreasonable proceeding.

11. As such, if no final order has been passed in a

proceeding under Section 43 (b) of the Bihar Pension Rules as yet, the respondents are restrained from passing any further order and the proceedings would be deemed to have come to an end. The respondents themselves have to blame for not concluding the proceeding under Rule 43 (b) of the Bihar Pension Rules even in 12 years. The instant order would not preclude the respondents from taking any other action in accordance with law.

12. With the observation aforesaid, this application stands disposed of.

(Samarendra Pratap Singh, J.)

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