

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12436 of 2007

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Vijay Kumar, son of Sri Nathun Singh, resident of village-Nawada, P.S. Makdumpur, District Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat Building, Patna
2. The Secretary-cum-Commissioner, Water Resources Department, Sichai Bhawan, Patna
3. The Secretary-cum-Commissioner, Minor Irrigation Department (Water Resources), Govt. of Bihar, Patna
4. The Deputy Secretary, Minor Irrigation Department (Water Resources), Govt. of Bihar, Patna
5. The Joint Secretary, Minor Irrigation Department (Water Resources), Govt. of Bihar, Patna
6. The Secretary, Finance Department, Govt. of Bihar, Old Secretariat Patna.
7. The Project Co-ordinator, Tube Well Project, Minor Irrigation, Visheshwariaya Bhawan, 4th Floor, Bailey Road, Patna.
8. The Chief Engineer (South), Tube Well Project, Minor Irrigation Department, West of Zoo, Shekhpura, Patna
9. The Chief Engineer (North), Bihar Water Development Corporation, Muzaffarpur
10. The Managing Director, Bihar Water Development Corporation, Surpedent Road, Patna
11. The Superintending Engineer, Tube Well Circle, Patna.
12. The Executive Engineer (Head Office), Bihar Water Development Corporation, Surpedent Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. LALAN KUMAR SINGH
For the Respondent/s : Mr. (AAG2)

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 02-03-2016

Heard learned counsel for the petitioner as well as learned counsel appearing for the State.

Petitioner seeks quashing of the order, contained in memo no. 289, dated 11.01.2007 issued under the signature of the Secretary to the Government, Water Resources Department (Annexure-11), by

which he has been dismissed from service.

Before I consider the rival submissions of the parties, it would be relevant to notice the facts of the case in short.

The petitioner was appointed as Overseer/ Junior Engineer by the Chief Engineer (Mechanical), State Tube Well in the Department of Irrigation, Government of Bihar in the year 1973 and was posted in Tube Well Division of Bhagalpur vide letter dated 22.02.1973. In the month of April, 1974, the Bihar Water Development Corporation (in short “the BWD Corporation”) was created and the service of the petitioner was transferred to the said Corporation on deputation. On 26.04.1979, the services of the petitioner was returned to his parent department which was regularized vide order dated 06.04.1979. In course of his service, he was transferred to Planning and Project Branch of the Head Office of the BWD Corporation by letter no. 2302, dated 27.04.1979. Consequently, he joined at the Head Office of the Planning and Project Branch at Patna. He was then transferred to Muzaffarpur vide letter no. 7722, dated 14.12.1979 and was relieved from the Head Office on 15.12.1979. The petitioner joined the office of the Chief Engineer at Muzaffarpur on 12.03.1980 but was not given any posting nor his salary was paid. Copy of the said letter, dated 15.12.1979 is annexed as Annexure-3. According to the petitioner, he was waiting

for posting and also remained without salary for about six months and his service in the meantime was returned to the Head Office, on 24.09.1981. Again, as there was no vacant post, the petitioner was not given any posting. Copy of letter dated 24.09.1981 is annexed as Annexure-4.

It is the further case of the petitioner that instead of giving him posting, he was show-caused for being absent vide letter, dated 01.07.1982 issued by the Chief Administrator of the BWD Corporation. He submitted his explanation on 22.07.1982. However, nothing untoward happened. It was only on 18.07.1986 that a charge-sheet was served on petitioner for his continuous unauthorized absence. The petitioner submitted his reply denying the charge. Again the matter remained in limbo for more than 10 years. It was only on 24.01.1996 that a fresh charge-sheet was issued against the petitioner for unauthorized absence. A copy of charge-sheet is contained in Annexure-8 to the writ application. The petitioner submitted his reply and participated in the departmental proceeding. The Inquiry Officer, on conclusion of the inquiry, exonerated him of the guilt.

The Disciplinary Authority not being satisfied with the inquiry report dismissed the petitioner from service vide order, dated 07.10.1996, which was successfully challenged in CWJC No. 12572 of 1996. Learned Single Judge noticed that the impugned order of



dismissal was passed without furnishing a copy of the inquiry report to the petitioner. He opined that as the inquiry report was in favour of the petitioner, the Disciplinary Authority should have given a second show-cause notice stating its tentative reasons for disagreeing with the findings recorded by the Inquiry Officer. Learned Single Judge, as such, quashed the order of dismissal and remitted the matter to the Disciplinary Authority to proceed from the stage of giving second show-cause. The second show-cause notice was given and the petitioner again filed his reply to the same. Not being satisfied by the explanation offered by the petitioner, the Disciplinary Authority awarded punishment of dismissal from service. The petitioner thereafter filed representation before the Government which too was rejected vide impugned order dated 17.04.2007 (Annexure-19).

The petitioner submits that the Disciplinary Authority erred in coming to the conclusion that the petitioner remained on absent for a long period. He submits that soon after his transfer to the headquarter, he gave his joining on 09.11.981. However, no posting was given in absence of vacant post. In support of his submission, the petitioner has referred to letter, dated 24.09.1981, contained in Annexure-4. The petitioner submits that he filed representation for giving him posting, as no posting was assigned, he could not join work anywhere. His pivotal submission is that for the same charge, he

was proceeded in the year 1982, 1986 and again in 1996.

On the other hand, learned counsel for the State submits that the petitioner had remained on unauthorized absence right since 1981. As such, he was show-caused in the year 1982 and 1986. As the petitioner did not mend his ways, again a charge-sheet was issued in the year 1996 for remaining absent without leave.

I have heard counsel for the parties and perused the materials on record. It is true that the petitioner was earlier issued show-cause and charge-sheet in the year 1982 and 1986 for remaining under unauthorized absence. Those matters seemed consigned. This takes us to last charge-memo, dated 24.01.1996 contained in Annexure-8, which too was for remaining absent from service. The Conducting Officer exonerated him as the petitioner intermittently made representations for his posting. However, the Disciplinary Authority differed with the findings of Conducting Officer and found that the petitioner in flagrant violations of code of conduct, remained on unauthorized absence, and consequently dismissed him from service after complying with the principles of natural justice.

The scope of judicial review in the matter of departmental proceeding is limited to review of procedure and error of law. The Court would not enter into sufficiency or otherwise of the materials, on which the Disciplinary Authority has recorded its findings. The

Court would generally interfere if it comes to a finding that the order is perverse or based on no material or otherwise the proceedings suffers from grave illegality.

The Court does not find infirmity in the departmental proceeding nor is the order of Disciplinary Authority, based on no evidence. If one absence himself from duty, every such absence provides a fresh cause of action. Merely because an Authority did not act on earlier show-cause with respect to unauthorized absence, would not justify subsequent absence from duty without proper leave. The petitioner was show-caused and charge-memo issued for remaining on unauthorized leave in 1982 and 1986. It is true that the proceeding remained inconclusive. He was again proceeded in 1996 for remaining absent from duty after 1986, which gives a fresh cause of action for taking actions. In this view of the matter, I do not find that the subsequent proceeding in 1996 was not maintainable.

Coming to the last submission of the petitioner that the order of punishment of dismissal from service is too harsh and excessive. I find that the Inquiry Officer exonerated the petitioner of charge on the ground that he time and again, be filed representations for his posting. It is not a case where the petitioner totally vanished from the scene and was uncommunicative. In this view of the matter, this Court finds that the impugned order of dismissal is too harsh and

excessive and is accordingly set aside. The matter is remitted to the Disciplinary Authority to award any other punishment other than dismissal.

The writ application is disposed of accordingly.

(Samarendra Pratap Singh, J)

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