

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7642 of 2014

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1. Awadhesh Upadhyay Son of Late Durgesh Upadhyay Resident of Village -
Bangapur, P.S. Parwalpur, District - Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Rural Works Department, Bihar, Patna
3. The Joint Secretary, Rural Works Department, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak

For the Respondent/s : Mr. Nasim Yahya, GP-13

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 05-04-2016

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

The petitioner was posted as Assistant Engineer in Rural
Engineer Organization, now designated as Rural Works Department
in Works Sub-division, Aurangabad-II from July, 2003 to 05.07.2008.
On 27.07.2011 a show-cause was served with respect to memo of
charge in pursuant to the report of Flying Squad headed by the
Superintendent Engineer on 23.04.2011. The petitioner filed his reply
denying the charges.

He submitted that the charges are of the later dates. The
Rural Works Department, Government of Bihar, not being satisfied
with the explanation, awarded punishment withholding three



increments without cumulative effect and censure for the period 2010-11. In continuation of the earlier charges, Rural Works Department vide memo, dated 10.04.2015 decided to recover the alleged loss amount from the contractor as well as the officers. It was decided to recover 30% of the impugned amount of Rs.43,20,409/- from the petitioner.

Learned counsel initially challenged the impugned order awarding the punishment of censure and withholding of three increments without cumulative effect as well as the order, dated 10.04.2014, which is impugned in I.A. No. 9526 of 2015, but subsequently, the petitioner has confined his prayer to the second relief, namely, quashing of the memo, dated 10.04.2015, whereby the Department has decided to recover the 30% of the alleged loss amount from the petitioner. Learned counsel submits that vide memo no. 3108, dated 13.08.2012, the petitioner was already awarded punishment for the same set of charge and is again subjected to fresh punishment after three years. Further, awarding further punishment after three years on same set of charge amounts to double jeopardy. In support of his submission, the petitioner has placed reliance upon a decision rendered by the Hon'ble Apex Court in the case of O.K. Bhardwaj vrs. Union of India and others, reported in (2001) 9 SCC 180.

A counter has been filed on behalf of the State. Learned counsel for the State has in particular placed emphasis on para 10 of the Supplementary Counter Affidavit, which is quoted hereinbelow:-

“10. That the statement made in para 4 of the interlocutory application, it is submitted that the petitioner has wrongly stated that order passed vide letter no. 1163 dated 10.04.2015 (Annexure 9 of the I.A.) is under the Review Power. It is brought to the notice of the Hon’ble Court that the aforesaid letter was issued against the damage of road from Aurangabad-Navinagar via Mali-Bariyawa which has separate status just like criminal proceedings and departmental proceedings are two different phenomena and are imposed upon the delinquent for the same charges.”

I have heard counsel for the parties.

It is well settled that in the matter of disciplinary proceeding, the disciplinary authority cannot exercise the inherent power of review, unless and until the same is specifically provided. Rule 28 of Bihar CCA Rules, 2005 provide for power of revision. However, such power of revision/ review is to be exercised within a period of six months from the date, the concerned order is sought to be altered, amended or set aside. Rule 28 specifically says notwithstanding anything contained in these rules, the government, or the head of a department or the Appellate Authorities may at any time within six months from the date of proposed order to be revised, either

on his or its own motion or otherwise call for the record of any inquiry and revise any order made under these Rules.

In the instant case, I find that the power of view is sought to be exercised after a lapse of two and half years, which is not permissible under the 2005 Rules. Besides this, the second proposed fresh punishment, proposed on the same set of charges, amounts to double jeopardy and is not sustainable in law.

In this view of the matter, memo dated 10.04.2015 (Annexure-9) of the government recommending for recovery of 30% of the alleged loss amount from the petitioner is not permissible as the petitioner has already been punished three years before for the same set of charges.

Accordingly, the writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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