

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12439 of 2014

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Umesh Prasad Singh Son of Sri Ram Singhasan Singh resident of Village -
Pipari, P.S. - Kargahar, District - Rohtas at Sasaram.

.... Petitioner

Versus

1. The State of Bihar.
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. The Additional Secretary, Rural Works Department, Govt. of Bihar, Patna.
5. The Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Rural Works Department, Govt. of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak

For the Respondent/s : Mr. Kumari Amrita

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

2 11-05-2016 Heard counsel for the petitioner and learned counsel
appearing for the State.

Petitioner prays for quashing of Office Order, dated
26.03.2014, passed by Additional Secretary, Rural Works
Department, Govt. of Bihar, by which his services has been
dismissed under Rule 14(xi) of the Bihar Government Service
(Classification, Control & Appeal) (Amendment) Rules, 2007.

At the time of alleged incident, the petitioner was Junior
Engineer, NREP, Hasanganj Block, Katihar. He was trapped while
accepting draft of Rs.10,000/- from one, Md. Shaheed Akhtar on

29.11.2007. He was arrested and sent to custody and a vigilance case being Vigilance P.S. Case No. 127 of 2007 under Section 7, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, was instituted against him.

The petitioner was also departmentally proceeded under rule 17 of the Bihar CCA Rules, 2005, vide office order no. 57, dated 06.03.2008, issued by the Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Bihar, Patna. The petitioner filed a show-cause denying the charge. The Inquiry Officer in his report, dated 15.11.2009, did not hold petitioner guilty of the charge. On receipt of the inquiry report, the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, directed that regularization of the period of suspension would depend upon result of criminal case, being Vigilance P.S. Case No. 127 of 2007. A copy of Office Order is contained in Annexure-7 to the writ application.

After four years thereafter, a second show-cause notice was issued to the petitioner vide letter no. 1131, dated 11.02.2014, under the signature of Engineer-in-Chief, Road Construction Department, Bihar, Patna. The petitioner filed his show-cause reply. On consideration of the reply, the Department inflicted punishment of removal from service. Learned counsel for the



petitioner has assailed the impugned order on a number of grounds. He submits that once the final order was passed in departmental proceeding, the proceeding could not have been reopened after four years either by the disciplinary authority or by the appellate authority. The appellate authority or the government could have reviewed the matter in exercise of the power conferred under Rule 28, but that too within six months of the date of the order proposed to be revised. Learned counsel next submits that it would appear from second show-cause notice that neither the Engineer-in-Chief under whose signature the notice was issued nor the government, was aware that the matter stood concluded by final order of the disciplinary authority, dated 22.01.2010, contained in Annexure-7.

Learned for the State has defended the impugned action. He submits that the order, dated 22.01.2010, cannot be treated as final order concluding the departmental proceeding. As such, the respondents were not restrained from passing the final order after providing an opportunity second show-cause notice. He next submits that the report of the Inquiry Officer is not very specific as to whether he had exonerated the petitioner of charge of demanding and accepting bribe.

I have heard counsel for the parties. I find that the

impugned order was passed by Rural Works Department without consideration of order, dated 22.01.2010, passed by the disciplinary authority, namely, the Engineer-in-Chief-cum-Special Secretary, Rural Works Department taking a decision in the matter on consideration of the inquiry report.

As such, the impugned order passed by the government is set aside and the matter is remitted for fresh consideration and passing appropriate order, also taking into consideration the claim of the petitioner that the matter stood already concluded by final order in the departmental proceeding passed on 22.01.2010, contained in Annexure-7. While passing a fresh order, the government would also consider the submissions of the petitioner that the departmental proceeding cannot be reopened after more than three and half years of its conclusion.

With the observations, the writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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