

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1024 of 2016

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Kanhaiya Prasad Singh Son of Late Singhasan Singh resident of village - Karan, P.O. Pachpokhari, P.S. Nokha (Baghaila), District - Rohtas At Present residing in the house of Sri Dilip Kumar Mishra, Jagdeo Nagar, Near Leads Asian School, Purwee (Eastern) Gate, P.O. Danapur, New Bailey Road, Patna 801503

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Engineer - in - Chief (Dakshin), Water Resources Department, Government of Bihar, Patna
3. The Engineer - in - Chief (Madhya), Water Resources Department, Government of Bihar, Patna
4. The Under Secretary of the Government, Water Resources Department, Bihar, Patna
5. The Joint Secretary (Management), Water Resources Department, Bihar, Patna
6. The Chief Engineer, Water Resources Department, Dihari, District - Rohtas
7. The Superintending Engineer, Irrigation Department, Dihari, District Rohtas
8. The Superintending Engineer - Cum - Conducting Officer, Canal and Canal Construction and Drafting Anchal, Water Resources Department, Anisabad, Patna
9. The Executive Engineer, Irrigation Division, Nawanganar, District - Patna
10. The District Magistrate, Buxar
11. The Deputy Development Commissioner, District - Buxar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Adv.

For the Respondent/s : Mr. Sajid Salim Khan, SC25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-11-2016

Heard Mr. Umesh Kumar Mishra, learned counsel appearing for the petitioner and Mr. Sajid Salim Khan, SC25, for the State.

Two orders are being questioned by the petitioner in the present writ petition. While the order impugned at Annexure 15 bearing Memo No. 1929 dated 11.12.2014 is an order of punishment



imposing penalty of stoppage of one increment with non-cumulative effect, the other order sought to be questioned is at Annexure 18 bearing Memo No. 1885 dated 21.8.2015 also of the Engineer-in-Chief (South), whereby the pay allowances of the petitioner for the period of suspension i.e. 4.7.2013 to 2.5.2014 has been restricted to the subsistence allowance drawn by him during the period.

The two orders are questioned by Mr. Mishra, learned counsel for the petitioner, on the ground that it is violative of Rule 18(2) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), inasmuch as even when the Enquiry Officer has exonerated the petitioner of the charges framed vide enquiry report present at Annexure 14, the disciplinary authority while disagreeing with the finding of the Enquiry Officer, has passed the order of imposition of penalty but without adhering to the statutory provisions of Rule 18(2) of 'the Rules', which, inter alia, mandates that the disciplinary authority is to record its reasons for disagreement and communicate the same to the delinquent for reply thereto in terms of Rule 18(3) thereof.

Mr. Sajid Salim Khan, learned State counsel, while accepting the position in so far as Annexure 15 is concerned, which is order of penalty, submits that Annexure 16 is a distinct order not relatable to the punishment and whereby the pay and allowances for



the suspension period has been restricted to subsistence allowance and before which a show cause notice was also issued to the petitioner on 30.1.2015 as mentioned therein.

Although Mr. Mishra, learned counsel for the petitioner, endeavours to submit that the order dated 21.8.2015 of the Engineer-in-Chief (South) is an order passed on an appeal preferred by the petitioner but in my opinion, the submission is only taken to be rejected. The order at Annexure 16 does not reflect any such thing, rather it clearly mentions that soonafter revocation of suspension of the petitioner vide Memo No. 544 dated 13.5.2014, he was served with a notice on 30.1.2015 and on a reply so received from the petitioner that the order was passed. In the said circumstances, the attempt by Mr. Mishra to submit that the order at Annexure 16 is an appellate order is incorrect.

In view of the factual position discussed above, the order of penalty bearing Memo No. 1929 dated 11.12.2014 of the Engineer-in-Chief (Central) being in teeth of the statutory provisions underlying Rule 18(2) and (3) of 'the Rules' in absence of note of disagreement, cannot be upheld and is accordingly quashed and set aside. The matter is remitted to the disciplinary authority to proceed in the matter afresh from the stage of submission of enquiry report and its disposal in accordance with law.



In so far as the challenge to order dated 21.8.2015 is concerned, in absence of foundational facts to support the prayer made by the petitioner to question the order dated 21.8.2015, impugned at Annexure 16, the prayer is disposed of leaving it open for the petitioner to question the same in an appropriate proceeding.

The writ petition is allowed to the extent indicated above.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2016
Transmission Date	NA

