

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.427 of 2015

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1. Maheshwar Pathak Son of Late Yogendra Pathak, Resident of Mohalla- B.N. Jha Colony, (Madhubani), P.S. Madhubani Sadar, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Irrigation Department, Patna
2. The Engineer-in-Chief (Centre), Irrigation Department, Patna
3. The Engineer-in-Chief (North), Irrigation Department, Patna
4. The Superintending Engineer, Planning and Monitoring Anchal- 2, Irrigation Department, Bihar, Patna
5. The Superintending Engineer, Tirhut Nahar Anchal, Bettiah
6. The Executive Engineer, Tirhut Nahar Pramandal No. 1 Bettiah
7. The S.D.O. Banchiguli (under Tirhut Nahar Pramandal No. 2 Bettiah)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Adv.

For the Respondent/s : Dr. A.K. Upadhyaya, SC-20

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-09-2016

Heard Mr. Nachiketa Jha learned counsel for the petitioner and
Dr. A.K. Upadhaya learned S.C.2 for the State.

In the nature of the contest raised herein, it would not require
this Court to enter into the merits of the case.

The facts of the case briefly stated is, that the petitioner was
proceeded against for a breach in the Tirhut Canal Pramandal No.1,
Bettiah at Point No. 426 by service of a chargesheet bearing Memo
No. 1096 dated 12.9.2013 issued under the signature of the Engineer-
in-Chief (Central) placed at Annexure-1. An enquiry was held and a
report was submitted on 1.4.2014 by the Enquiry Officer-
cum- the Engineer-in-Chief(North), Water Resources Department,

Government of Bihar, Patna. It is in consideration of the enquiry report and the explanation given by the petitioner that a punishment order was passed by the Engineer-in-Chief (Central) vide Memo No.1384 dated 19.9.2014 impugned at Annexure-5 whereby the following penalties have been imposed:

- (1) Censure for the year 2013-14
- (2) Stoppage of three annual increments with non-cumulative effect; and
- (3) Withholding of promotion for five years.

The petitioner went in appeal against the order of punishment and which has been rejected by the State Government as communicated by the Engineer-in-Chief (Central) vide memo No. 1112 dated 18.5.2015 impugned at Annexure-9 to I.A. No. 7351 of 2015.

Although Mr. Jha learned counsel for the petitioner has endeavored to question the order of punishment on merits in reference to the discussion found in the letter of the Superintending Engineer, Tirhut Canal Division, Bettiah dated 3.8.2013 present at Annexure-4 but in my opinion, the said aspect of the contest need not be gone into for the present in view of the uncontested submission made by Mr. Jha that the copy of the enquiry report dated 1.4.2014 was never handed over to the petitioner. Mr. Jha learned counsel appearing for

the petitioner has referred to the judgment of the Supreme Court rendered in the case of **ECIL Vs. B. Karunakar** reported in (1993) 4 SCC 727 in support of his submission.

Although Dr. Upadhyay learned State counsel has referred to the reply filed on behalf of the State to the issues raised in the supplementary affidavit and to submit that being a case of imposition of minor penalty, the service of enquiry report was not required but the stand taken, in view of the law settled by the Supreme Court, is indefensible. It is also indefensible in view of the statutory stipulations present in the Bihar Government (Classification, Control and Appeal) Rule, 2005 (hereinafter referred to as 'the Rules') more particularly Rule 19 which deals with procedure for imposition of minor penalties and at Clause (b) of Sub-rule (1) leaves a discretion with the Disciplinary Authority to follow the exhaustive procedure provided under Rule 17. Since in the present case the disciplinary authority has taken recourse to the procedure as provided for imposition of major penalty as per Rule 17 by appointment of an Enquiry Officer as well as Presenting Officer then the said procedure once adopted could not be abandoned midway. Thus neither on grounds of procedural infraction nor in view of the law settled by the Supreme Court in the case of **Karunakar** (supra), as followed in subsequent judgments, the orders impugned can be upheld and

accordingly, the punishment order impugned at Annexure-5 dated 19.9.2014 together with the appellate order dated 18.5.2015 impugned at Annexure-9 are quashed and set aside.

This order however would not preclude the disciplinary authority to proceed in the matter afresh and for its disposal in accordance with law, from the stage of service of enquiry report as mandated under the rules.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	7.10.16
Transmission Date	