

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1581 of 2011

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Binit Kumar Singh Son of Late Rameshwar Prasad Singh R/o Village and P.O. Nowhatta, P.S. Nawhatta District- Sharasa, at Present Posted as Assistant Director, Quality Control Sub Division, Road Division No.2 Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary to Government, Road Construction Department, Visheshwariya Bhawan, Bailey Road Patna
2. Engineer-in-Chief Road Construction Department, Visheshwariya Bhawan, Bailey Road Patna
3. Joint Secretary to Government Road Construction Department, Visheshwariya Bhawan , Bailey Road Patna
4. Deputy Secretary to Government (Vigilance) Road Construction Department, Visheshwariya Bhawan, Bailey Road Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. GIRISH NANDAN PRASAD SINGH

For the Respondent/s : Mr. Arun Kumar Bhagat, A.C. to AAG-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-10-2016

Heard Mr. Girish Nandan Prasad Singh, learned counsel for the petitioner and Mr. Arun Kumar Bhagat, Assisting Counsel to AAG-12 for the State.

The petitioner is aggrieved by the order bearing Memo No. 14499 dated 10.12.2009 of the State Government in its Road Construction Department whereby the petitioner has been visited with the following penalties:

- (a) Censure for the period 2006-07;
- (b) Withholding of two annual increments with non-cumulative effect; and

- (c) Restriction of pay and allowance for the suspension period to the subsistence allowance drawn by the petitioner.

While it is argument of Mr. Singh, learned counsel appearing on behalf of the petitioner that the entire proceedings is resting on a vague charge sheet and the finding is contrary to the facts available on records, such argument is contested by the State counsel in reference to the allegation made on the petitioner as found in the charge sheet. Mr. Singh, learned counsel for the petitioner has relied upon decision of the Supreme Court since reported in **(1970)3 SCC 548 (Sarath Chandra Chakarbarty vs. State of West Bengal)** to submit that a vague charge sheet cannot be a foundation for a disciplinary proceedings. He also refers to the judgment reported in **(1999) 2 SCC 10 (Kuldeep Singh vs. Commissioner of Police)** and the judgment reported in **(2010)2 SLJ 59 (State of U.P. vs. Saroj Kumar Sinha)** to submit that in absence of supply of document supporting the charge, the proceeding stands vitiated.

I have heard learned counsel for the parties and I have perused the records. The charge sheet is impugned at Annexure-9 and charges the petitioner on three counts, namely:

- (a) The petitioner has failed to carry out timely supervision of the work being carried out under Package No. BR/SB9W/MDR/4/2006-07;
- (b) He has recommended for removal of the Contractor

by finding fault on the work executed on extraneous reasons; and

- (c) The petitioner has demanded 5 per cent commission from the Contractor.

The two evidences stand discussed in the charge sheet are a letter of the Executive Engineer dated 28.5.2007 and a letter stated to have been written by the petitioner demanding 5 per cent commission. Both the documents form part of Annxure-9 at page 55 and 57.

The petitioner held the post of Assistant Director, Quality Control at the relevant time. Surprisingly, even though the report submitted by the Executive Engineer to the Commissioner-cum-Secretary, Road Construction Department dated 28.5.2007 present at page 55 which is one of the evidence referred to in the charge memo, is substantively directed against one Jang Bahadur Singh, Assistant Engineer and the Junior Engineer for their failure to carry out timely supervision and points out defects in the work executed and in the process the Executive Engineer has merely stated that if the Assistant Engineer, Junior Engineer and Assistant Director would have been vigilant then the work could have been executed in a better manner. It is this observation of the Executive Engineer which is the foundation of the departmental proceedings.

The other evidence regarding demanding of 5 per cent commission is present at page 57 and there is nothing to suggest that it

was written by the petitioner.

It is taking into consideration such aspect of the matter that the Enquiry Officer while submitting his report present at Annexure-14 has while rejected the allegation of demand of money by the petitioner but the Enquiry Officer has upheld the allegation regarding the failure of the petitioner to carry out timely supervision on the work as well as of pointing out defects in the work executed by the Contractor.

The issue which falls for consideration is that where the allegation of demand of commission which is a serious charge, has not been upheld by the Enquiry Officer and accepted by the disciplinary authority, whether even if the allegation present at charge no. 1, is accepted on its face value, it would constitute a 'misconduct'.

The allegation as I have already mentioned fails the petitioner on timely supervision of the project and of pointing out defects in the work executed. In my opinion, the two instances discussed in Charge No. 1 is without any substance and even if accepted on its face value, does not constitute a 'misconduct'. It is by now well settled that not every failure in discharge of a duty is to be construed as a misconduct unless the consequences are serious, irreversible, contrary to rules or de hors the directions. There is no such discussion in the allegation. On the contrary, the Charge No. 1



while charging the petitioner of pointing out defects in the work for extraneous considerations, also fails him on regular supervision. Mr. Singh has referred to an inspection report carried out by the Superintending Engineer on the allegation made by the Mukhiya of the Gram Panchayat regarding poor quality of work which is present at Annexure-13. The Superintending Engineer has specifically mentioned that the Assistant Engineer, the Junior Engineer and the petitioner were present at the place of work and were carrying out supervision properly. It is further mentioned by the Superintending Engineer that these persons were carrying the directions in its entirety but it is the Executive Engineer who in fact had defaulted. The report of the Superintending Engineer is a confirmation of the fact that the petitioner along with the Assistant Engineer and the Junior Engineer were not found wanting in their supervisory work rather the allegation was directed against the Executive Engineer whose report is the foundation for the charge sheet.

For the discussions aforementioned and in view of the report of the Superintending Engineer present at Annexure-13, the finding of the Enquiry Officer as upheld by the disciplinary authority regarding the failure of the petitioner to carry out the timely supervision cannot be sustained because it is contrary to records. The order impugned is based on no evidence rather the evidence present at

Annexure-13 is to the contrary.

In result, the punishment order bearing Memo No. 14499 dated 10.12.2009 passed by the State Government in its Road Construction Department impugned at Annexure-16 cannot be upheld and is accordingly quashed and set aside.

The consequences flowing from the present order in the form of payment of the increments withheld as well as the salary for the suspension period, be paid to the petitioner within a period of three months from the date of receipt / production of a copy of the order.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10-11-2016
Transmission Date	NA