

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.319 of 2016

Arising out of

Letters Patent Appeal No. 2189 of 2015

Arising out of

Civil Writ Jurisdiction Case No.17994 of 2012

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Ashok Kumar Singh, Executive Engineer, son of Sri Ram Ekbal Singh, resident of Pachlak, P.S. Parsa Chapra, District-Chapra (Saran).

....Petitioner-Respondent-Review Petitioner
Versus

1. The State of Bihar.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer (Flying Squad), Rural Works Department, Government of Bihar, Patna.

.... Respondents- Appellants-Opposite parties.

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Appearance :

For the Petitioner/s : Mr. Ajet Kumar, Advocate
Mr. Shardendu Kumar, Advocate

For the Respondent/s : Mr. Raghwanand, G.A.-11
Mr. Sanjay Kumar Tiwari, A.C. to G.A.-11

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 25-10-2016

Re.: Interlocutory Application No.4951 of 2016

The application is for condonation of delay of 46 days in filing of the present Civil Review Petition.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Civil Review Petition.

3. Interlocutory Application stands allowed accordingly.

Re.: Civil Review No.319 of 2016

The present is an application for review of the order passed by this Court on 6th April, 2016 whereby the Letters Patent Appeal was allowed and the order passed by the learned Single Bench was set aside and the order of punishment imposed by the disciplinary authority was restored.

2. The present review application has been filed after change of counsel. That itself is a ground to decline the review petition, but we have heard learned counsel for the petitioner on merits as well.

3. The petitioner has sought review of the order dated 6th April, 2016 passed in Letters Patent Appeal No.2189 of 2015 on two grounds. Firstly, that this Court has recorded a finding that it was not the case of the writ applicant that there was any bias or *mala fide* and of which officer. It is stated that *mala fide* was alleged in Interlocutory Application No.7033 of 2010, therefore, there is error apparent on record. Secondly, that the enquiry officer has exonerated the writ applicant, but without recording the reasons of disagreement, the order of punishment has been passed, which violates the dictum of law laid down by the Hon'ble Supreme Court in Punjab National Bank Vs. Kunj Behari Misra, (1998) 7 SCC 84.



4. After hearing the learned counsel for the petitioner, we find both the arguments to be untenable. It has been recorded that it was not the case of the writ applicant that there was any bias or *mala fide* and of which officer. What is pleaded by the writ applicant in paragraph 8 of the Interlocutory Application No.7033 of 2010 is that there was *mala fide* intention of the authorities, but which authority acted *mala fide* or in what manner was not disclosed, nor was any person who is stated to have acted in such manner was impleaded as a party. It is well settled that allegation of *mala fide* is easily levelled than proved. The allegation of *mala fide* can be proved only if the person against whom such allegations are levelled is impleaded as the party respondent and is given an opportunity to rebut the allegation so levelled. The applicant has not raised any allegation in the writ application, but levelled the allegation in the interlocutory application, but even then the officer against whom such allegation has purportedly been made, is not impleaded as party. Therefore, we do not find that there is any error in the order passed by this Court on 6th April, 2016 when it is mentioned that it was not the case of the writ applicant that there was any bias or *mala fide* and of which officer.

5. In respect of an argument that the enquiry officer exonerated the respondent, but without recording any disagreement note, the punishment has been awarded, the said aspect has been

considered in paragraph 7 of the order wherein it has been recorded that disagreement note was recorded and communicated. That is the mandate of law in Kunj Behari Misra's case (supra).

6. We do not find any error apparent on record which may warrant review of the order. In fact, under the guise of review, the petitioner wishes to re-argue the matter. We do not find any ground to entertain the present review petition. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
Uploading Date	27.10.2016
Transmission Date	