

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10290 of 2015

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Ashok Kumar Singh Son of Late Phagu Singh, resident of village - Khaira,
P.S. Sahar, District - Bhojpur

.... **Petitioner**

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna
3. The Additional Secretary, Road Construction Department, Bihar, Patna
4. The Deputy Secretary (Vigilance), Road Construction Department, Govt.
of Bihar, Patna

.... **Respondents**

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Appearance :

For the Petitioner/s : Mr. Abhay Singh, Sr. Advocate
Mr. Prabhu Nath Pathak

For the Respondent/s : Mr. AC to AG

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

3 31-03-2016 Heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of the notification, dated 15.5.2015 issued by the Deputy Secretary (Vigilance), Road Construction Department, Government of Bihar, Patna whereby he has been awarded punishment of withholding of three annual increments with cumulative effect.

The petitioner was posted as Assistant Engineer, Road Sub-Division, Dalsinghsarai from 28.6.2003 to 15.3.2008. He was earlier proceeded departmentally on the allegation of using 5% less comprehensive strength of bricks in repairing of road from 01 KM to 28 KM from Bajiitpur-Dalsinghsarai-Narhan-Rosera under Road Division, Samastipur.



After conclusion of the proceeding, the petitioner was awarded punishment of censure by government vide notification, dated 27.9.2010. However, the government vide notification, dated 24.8.2011 reviewed the order of punishment and decided to initiate a regular proceeding against him for the same set of charges. The petitioner filed objection for initiation of fresh proceeding against him on the same charges. After conclusion of the proceeding, this time the petitioner was awarded stoppage of three annual increments with cumulative effect.

The petitioner has raised two grounds. Firstly, he submits that once the enquiry proceeding was concluded, the respondents could not have started a fresh proceeding on the same set of charges. Secondly, the disciplinary authority while issuing the second show cause notice has not arrived at its own independent decision with respect to tentative disagreement with the findings recorded by the Enquiry Officer which was in his favour.

Learned State counsel submits that the government in exercise of powers under Rule 28 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 has set aside the earlier order and remitted the case for starting a regular departmental proceeding. He next submits that upon receipt of the enquiry report, the department sought view of the Technical

Committee which found certain discrepancies in the enquiry report.

I have heard learned counsel for the parties.

Though a number of points have been raised, this writ application can be disposed of on limited issue as to whether second show cause notice has been issued in accordance with law.

Rule 18(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 vests power with the disciplinary authority to disagree with the findings of the enquiry authority on any article of charge. However, the disciplinary authority has to recall its own finding on such charge if it disagrees with the view of the disciplinary authority.

In the instant case, I find that the disciplinary authority has not recorded any finding of its own while disagreeing with the views of the Enquiry Officer. The second show cause merely states that as the Technical Committee has expressed its disagreement with the findings of the Enquiry Officer, the same is being issued.

I find that there is no independent exercise of mind of the disciplinary authority on the recommendation of the Technical Committee. The disciplinary authority even does not state that he prima facie or tentatively agrees with the recommendation of the

Technical Committee.

In this view of the matter, the second show cause notice dated 9.12.2014 is in teeth of the law laid down by the Apex Court in the case of ***Punjab National Bank & Ors vs. Kunj Behari Misra, reported in (1998)7 SCC 84 and Lav Nigam vs. Chairman and M.D. ITI Limited & anr, reported in (1998) 7 SCC 84.***

In the result, the second show cause notice dated 9.12.2014 is set aside as also the consequential punishment pursuant to it, with liberty to the respondents to proceed afresh from the stage of issuance of second show cause notice. It is expected that the proceedings would be concluded within four months from the date of receipt/production of a copy of this order.

This writ application is, accordingly, allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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