

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.89 of 2017

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Birendra Kumar Singh, Son of Sri Jai Narain Singh, Resident of Village- Repura, Rampur (Wali), P.S.-Saraiya, District Muzaffarpur, Draftsman Grade-II (Prarupak Grade-II), at present Nil Chitrak/ Nil Mukrak in the Office of Executive Engineer, National Highway Division, Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Road Construction Department, National Highway Division, Govt. of Bihar, Patna.
4. The Superintending Engineer, Road Construction Department, National Highway Circle, Muzaffarpur.
5. The Executive Engineer, National Highway Division, Chhapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Verma, Adv.
Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Raj Ballabh Pd. Yadav, AAG-11
Dr. Sanjay Kr. Singh, AC to AAG-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-03-2017

Heard Mr. Sanjay Kumar Verma, learned counsel appearing for the petitioner and Mr. Raj Ballabh Prasad Yadav, learned Additional Advocate General No.11 for the State.

The petitioner is aggrieved by the order bearing Memo No.823 dated 14.3.2015 of the Chief Engineer, the respondent no.3, whereby in purported compliance of the order passed by this Court in CWJC No.5653 of 2014 requiring the Chief Engineer to dispose of the appeal, he has disposed of the representation filed by the petitioner on 12.1.2015.



Apart from questioning the decision on merits, it is the submission of Mr. Verma, learned counsel appearing for the petitioner that as against the order of reversion, the petitioner has filed a statutory appeal, a copy of which is present at Annexure-10 which was filed as back as on 7.7.2009. He submits that since this appeal was not being disposed of that the petitioner was forced to approach this Court in CWJC No.5653 of 2014. Although a counter affidavit was filed by the State in the said case but no statement was made as regarding the disposal of the pending appeal of the petitioner and the Bench in consideration of the circumstances disposed of the writ petition with the following directions:

“A counter-affidavit has been filed on behalf of the respondent State of Bihar, wherein an effort has been made to support the impugned order of reversion/ demotion. However, in the whole counter-affidavit no statement has been made with respect to the disposal of the aforesaid service appeal filed by the petitioner before the respondent no.3. Learned State counsel, on a query made by this Court, submitted that a direction may be issued to the respondent no.3 for disposal of the service appeal at an early date.

In the aforesaid facts and circumstances, the present writ petition is disposed of with a direction to the respondent Chief Engineer (respondent no. 3) to dispose of the appeal preferred by the petitioner filed against the impugned order of reversion/ demotion at an early date preferably within a period of three months from the date of receipt/production of a copy of this order.

It goes without saying that while considering the appeal of the petitioner, the respondent no. 3 shall take into consideration all the points raised by the



petitioner in his appeal and shall dispose of the same by a reasoned and speaking order strictly in accordance with law.

The writ petition stands finally disposed of with the observations and directions made above.”

He submits that following the disposal of the writ petition the petitioner filed a representation on 12.1.2015 vide Annexure-13 and the Chief Engineer, respondent no.3 without appreciating that the representation was a mere reminder to the appeal petition filed on 7.7.2009 and the supplementary petition dated 28.7.2009, has proceeded to dispose of the representation itself, yet keeping the appeal pending.

Although Mr. Yadav, learned Additional Advocate General No.11 has tried to explain the situation but the defect is incurable. The petitioner holding a post of Blue Printer was promoted to the post of Draftsman Grade-II vide order bearing Memo No.455 dated 7.8.2006 placed on record vide Annexure-5 and has been reverted by the Superintending Engineer vide office order dated 4.6.2009 i.e. more than three years thereafter, inter alia, on grounds that there was a defect in the decision-making process and that the requirement(s) of the reservation roster, seniority and qualifying examination, was not followed for such promotion.

Feeling aggrieved the petitioner filed an appeal before the Chief Engineer through proper channel, a copy of which appeal



dated 7.7.2009 is enclosed at Annexure-10. Since in the meanwhile recovery process started that he was forced to come before this Court in CWJC No.5653 of 2014 and which was disposed of by this Court by the order reproduced hereinabove, with a direction to the Chief Engineer to dispose of the appeal, however, the disposal has taken place in a rather casual manner.

There is no contest that the disposal is of the representation dated 12.1.2015 and not the appeal filed on 7.7.2009 and the supplementary petition dated 28.7.2009. The order lacks application of mind and since by the said order the appeal does not get disposed of, it does not satisfy compliance of the order passed by the Writ Court.

In the circumstances, the order bearing Memo No.823 dated 14.3.2015 of the Chief Engineer, respondent no.3 put to question in this writ petition at Annexure-14 cannot be upheld and is accordingly quashed and set aside. The matter is remitted to the Chief Engineer, respondent no.3 for ensuring compliance of the order of this Court, by the disposal of the appeal, a copy of which is present at Annexure-10, in accordance with law.

The petitioner shall appear before the Chief Engineer, respondent no.3 along with a copy of this order on or before 20th of March, 2017 and when the Chief Engineer, the Appellate Authority



shall proceed to dispose of the appeal in accordance with law with an opportunity of hearing to the petitioner expeditiously and preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08-03-2017
Transmission Date	NA

