

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10721 of 2008

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Bhim Sen S/o Late Yaddu Ram, resident of Paharpur Police Colony, Anisabad, P.S
Gardanibagh, District Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Minor Irrigation Department, Government of Bihar, Patna.
3. The Joint Secretary, Minor Irrigation Department, Government of Bihar, Patna
4. The Deputy Secretary, Minor Irrigation Department, Government of Bihar,
Patna
5. The Under Secretary, Minor Irrigation Department, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate
Mr. Ritu Raj, Advocate
Ms. Ritika Rani, Advocate

For the Respondent/s : Mr. Jitendra Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 31-01-2017

Heard both sides.

The petitioner seeks quashing of the order dated 11.04.2007, as contained in Memo No. 1859, (Annexure-6) by which certain punishments have been imposed upon the petitioner. The petitioner also seeks quashing of the order dated 08.06.2007, as contained in Memo No. 3155, (Annexure-7), whereby appeal preferred by the petitioner against Annexure-6 has been dismissed.

The short facts, which are relevant for disposal of this writ petition, are that petitioner was posted as Boring Clerk in the office of Chief Engineer, Minor Irrigation, Water Resources Department,



Government of Bihar, Patna. Vide order contained in Memo No. 4826 dated 06.10.2006, the petitioner was put under suspension and he was proceeded departmentally on two charges. Firstly, that petitioner received letter No. 159 dated 19.04.2006 from Fakira Rajak of Bihar Prantiya Lift Association but he did not apprise the concerned authorities about the receipt of the letter. Secondly, one Bachaneshwar Thakur, the then Assistant Engineer, filed an appeal on 07.06.2006 but the petitioner received the appeal backdating his signature on 15.01.2004 and 05.04.2004 and on enquiry it was found that the petitioner received the appeal on 07.06.2006. After conclusion of the departmental enquiry, the enquiry conducting officer did not find both the charges proved against the petitioner and he recorded that the petitioner should have been more careful in discharging his duties and recommended for minor punishment but the Disciplinary Authority, after receiving the enquiry report, issued second show cause to the petitioner, without giving any point of difference with the enquiry report, and after perusing the show cause by his order, as contained in Annexure-6, inflicted following punishments:-

- (1) Censure for the year 2006-07;*
- (2) Withholding of two annual increments with cumulative effect;*
- (3) The petitioner would not be paid anything except subsistence allowance for the period of suspension.*



The petitioner preferred appeal but the Appellate Authority, without giving any reason, dismissed the appeal vide Annexure-7.

Sri Dinu Kumar, the learned counsel for the petitioner, submits that the enquiry conducting officer did not find the petitioner guilty of any of the counts and only recorded that petitioner should have been more diligent in discharging his duties but second show cause notice was served upon the petitioner, without giving any point of difference, and thereafter the Disciplinary Authority inflicted punishment, without giving any reason and appreciating the evidence, and the same was the fate of the appeal of petitioner as the Appellate Authority has also not assigned any reason. It is submitted that two annual increments of the petitioner with cumulative effect were stopped but there is no finding with regard to the guilt of the petitioner. It is further submitted that salary of the petitioner, during the suspension period, has also been stopped but no notice, as required under Section 11(5) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, was given to the petitioner.

The learned counsel for the State, in his counter affidavit, has not specifically stated that second show cause notice was given along with point of difference.



From the facts, it appears that the order of the Disciplinary Authority, inflicting major punishment upon the petitioner, is non speaking. The order of the Appellate Authority is also non speaking.

Section 11 of Bihar Govt. Servants (C.C.A.) Rules, 2005 deals with treatment of service on reinstatement and admissibility of pay and allowance after suspension.

Sub section 5 of Section 11 clearly provides that in cases other than those falling under sub-rules(2) and (3) of this rule, the government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the disciplinary authority may determine. Such determination by the disciplinary authority shall be done after giving due notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the government servant.

The order of the Disciplinary Authority, inflicting punishment, does not show that the Disciplinary Authority, before forfeiting the salary of the petitioner, during suspension period, ever issued notice to the petitioner. Therefore, I find that the impugned orders suffer from illegality and not sustainable in the eye of law.



Accordingly, the orders, as contained in Annexure-6 and Annexure-7, are quashed and the matter is remitted to the Disciplinary Authority to pass order afresh in accordance with law, within three months, from the date of receipt/ production of a copy of this order.

This writ petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

