

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1323 of 2011

In

Civil Writ Jurisdiction Case No.3935 of 2008

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Umesh Kumar, S/O Sri Rameshwar Singh, R/O Village Uttar Sherthu, P.S.
Pali in the District of Jehanabad.

... .. Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government Of Bihar, Patna.
2. The Engineer In-Chief, Road Construction Department, Government Of Bihar, Patna.
3. The Chief Engineer, North Bihar (Communication) Road Construction Wing, Darbhanga.
4. The Conducting Officer Cum-Technical Advisor, Training, Road Construction Department, Government Of Bihar, Patna.
5. The Presenting Officer Cum -Assistant Engineer Road Construction Department, Patna.
6. The Superintending Engineer, R.C.D. Circle, Darbhanga.
7. The Executive Engineer, R.C.D. Road Division, Madhubani.
8. The Assistant Engineer, R.C.D. Sub - Division, Jhanjharpur, Madhubani.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vinay Ranjan, Advocate

For the Respondent/s : Mr. P.K. Verma AAG 3
Mr. S. K. Sharma, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-10-2017

Seeking exception to an order dated 20th April, 2011 passed by the Writ Court in CWJC No.3935 of 2008, this appeal has been filed by the appellant.

The appellant was working at the relevant time as a Junior Engineer in the Road Construction Department and on account of



the fact that he remained absent from duty and is said to have committed act of insubordination by abusing the Assistant Engineer, a charge memorandum was issued to him vide Annexure-17. A departmental enquiry was conducted and the inquiry officer submitted a report exonerating him of all the charges, but the disciplinary authority disagreed with the finding of the enquiry officer, without issuing the second show cause notice, held him guilty of both the charges and by an order Annexure-21 dated 24.07.2007 awarded punishment of censure and disallowing full salary during the period of suspension.

Challenging the aforesaid order, the writ petition in question was filed and the one of the grounds raised in the writ petition was that as the enquiry officer has exonerated the petitioner of the charges levelled against him before disagreeing with the finding of the enquiry officer and recording his own finding, the disciplinary authority ought to have issued notice to the petitioner, heard him and this having not been, the principles of law laid down in the case of **Punjab National Bank & Ors. v. Kunj Behari Misra**, (1998) 7 SCC 84, is violated and the entire action stands vitiated. The learned Writ Court took note of all these factors and allowed the writ petition in part by holding that before directing for confirmation of the period of suspension and withholding of



salary, the requirement of Rule 97 of the Bihar Service Code and the law laid down in the case of **Mahabir Prasad v. State of Bihar**, 1988 PLJR 82, has not been followed and to that extent, the writ petition was allowed. However, with regard to imposing of punishment of censure, the learned Writ Court found that under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the punishments have been classified into two categories, minor penalties and major penalties, and for the purpose of imposing minor penalty, the principles of law laid down in the case of **Kunj Behari Misra** (supra) need not be followed as the enquiry officer having exonerated the employee, by issuing a second show cause notice, the minor punishment could be imposed. In our considered view, this finding and the principles laid down by the learned Writ Court is not at all correct. Once for a punishment, be it major or minor, a departmental enquiry is conducted and the employee is exonerated of the charges levelled by the enquiry officer, if the disciplinary authority wants to disagree with the finding of the enquiry officer and record his own finding holding the employee guilty and, therefore, the law laid down in the case of **Kunj Behari Misra** (supra) and in the case of **S. P. Malhotra Vs. Punjab National Bank & Ors.** [(2013) 7 SCC 251] is very clear that the principles of natural



justice wants issuing a show cause notice to the employee indicating him the reasons and the grounds by which the disciplinary authority proposes to disagree with the finding of the enquiry officer, hear the employee concerned, grant him an opportunity of hearing and then record an independent finding as to why the charges levelled are proved. In this case, this principle has not been followed and merely because a minor punishment is imposed, the law laid down in the case of **Kunj Behari Misra** (supra), which is a requirement of the rules of natural justice, cannot be diluted or done away with in holding that the principles of law laid down in the case of **Kunj Behari Misra** (supra) will not apply in the case of a minor punishment, we are of the considered view that the learned Writ Court has committed a grave error. The principles laid down in the case of **Kunj Behari Misra** (supra) with regard to disagreement by the disciplinary authority on a finding of exoneration given by the enquiry officer shall apply in all cases, be it minor punishment or a major punishment. Therefore, on this ground alone, the appeal and the writ petition have to be allowed, the order passed by the learned writ court is set aside, the order impugned, Annexure-21, dated 24.07.2007 quashed. Liberty shall be available to the department



to proceed with the inquiry from the stage of submission of inquiry report.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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