

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16562 of 2008

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Rajendra Prasad Kesary, Son of Late Deo Nandan Pd. Singh, R/O Village –
Asadpur Satpura, P.S. – Bhagwanpur, District – Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Old Secretariat, Patna-1.
2. The Commissioner-cum-Secretary, Water Resources Department, Government of Bihar, Old Secretariat, Patna-1
3. The Deputy Secretary, Water Resources Department, Government of Bihar, Irrigation Bhawan, Bailey Road, Patna-1.
4. The Engineer-in-Chief (Middle), Water Resources Department, Government of Bihar, Irrigation Bhawan, Bailey Road, Patna-1.
5. Shri Ram Prasad Ram, The Enquiry Officer-cum-The Superintendent Engineer, High Level Sone Canal Circle, Aurangabad.

.... Respondents

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Appearance :

For the Petitioners : Mr. Vijay Kumar, Advocate.
Mr. Kapildeo Singh I, Advocate.

For the Respondents : Mr. (AAG6)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 28-01-2017

The petitioner seeks quashing of the order dated 26.08.2008 (Annexure-6) Memo No. 703 of this writ petition issued under the signature of Deputy Secretary, Government of Bihar, Water Resources Department by which the petitioner was censured for the year 2003-04. Two increments were stopped with non-cumulative effect and the petitioner is not entitled to get any salary save and except suspension allowance during the period of suspension.

2. The petitioner was Assistant Engineer in North Koyal Canal Sub-Division, Madanpur, Aurangabad. On the basis of the



report of the Chief Engineer, Water Resources Department, Aurangabad, the petitioner was put under suspension vide Memo No. 25 dated 01.02.2005. The following three charges were framed against the petitioner :

i). the jeep shed and chowkidar shed and the divisional office building were not properly constructed and repaired

ii). the wood plank of window and doors were not fixed according to the satisfaction of the tender

iii). No proper white washing was done but bill was passed.

3. The enquiry conducting officer held the enquiry and after perusing the materials submitted by the department as well as by the petitioner, the enquiry conducting officer did not find the charges proved and exonerated the petitioner from all the charges Annexure-3, but the disciplinary authority issued show cause differing with the finding of the enquiry conducting officer Annexure-3. The petitioner gave his detailed reply. The disciplinary authority without any evidence vide order dated 26.08.2008 imposed the punishment.

4. The respondents filed counter affidavit and stated that the departmental proceeding was initiated under Rule 55 of Civil Services Classification Control and Appeal Rules, 2005. There is no



illegality in the procedure and only minor punishment is imposed differing with the findings of the enquiry conducting officer.

5. Learned counsel for the petitioner submits that punishment, of course, is simple in nature and based on no evidence. It is admitted that this Court in writ jurisdiction does not sit in appeal. All the findings of the disciplinary authority is based on no evidence and from perusal of the order of the disciplinary authority (Annexure-6), it would appear that since the Chief Engineer has complained about illegality in construction and repairing of shed in the premises of the Chief Engineer, when the same was damaged after cyclone. The punishment has been inflicted on no evidence. The enquiry conducting officer has very specifically recorded his findings that there was no defects in construction of sheds rather the same was damaged due to the cyclone in which many other buildings and constructions of the Water Resources Department were damaged.

6. On the other hand learned counsel for the State submits that the departmental proceeding does not suffer from any procedural illegality and this Court is not sitting in appeal to look into the findings of the enquiry officer on the ground of insufficiency of evidence that too when a simple punishment is inflicted.

7. But on considerations of the facts and on perusal of the enquiry reports, it appears that the enquiry conducting officer did not



find any charge proved against the petitioner. The disciplinary authority however issued notice differing with the findings of the enquiry conducting officer, but did not point out evidence with regard to which he differed from the findings of the enquiry conducting officer. The petitioner also filed his show cause stating the facts but the explanation of the petitioner was not considered at all and the disciplinary authority has not referred any evidence on the basis of which he differed with the findings of the enquiry officer can be passed and he simply inflicted the punishment merely because the Chief Engineer, himself, made allegation with regard to illegality in construction and repairing of the buildings. Of course, this Court, in writ jurisdiction, does not sit in appeal nor took a different view with regard to findings of the disciplinary authority on the ground of insufficiency of evidence, but when the finding, itself, is based on no evidence the order can be interfered in writ jurisdiction also. The petitioner reported that no wooden plank was fixed in window and door and, therefore, he did not make any recommendation for payment. Therefore, on this ground it was found that the petitioner should have directed the contractor to fix the wooden plank in the window and doors. Work was not completed at the time of his first measurement, therefore, there was no question of issuing any direction for construction of the completion of the work, final



payment is made only after completion of the entire work. Salary of the petitioner during suspension was also withheld without giving notice to the petitioner. According to sub-Rule 5 of Rule 97 of Bihar Service Code, the petitioner is required to be noticed before forfeiture of salary during suspension period, therefore the order is illegal on this score also.

8. Therefore, I find that the order as contained in Annexure-3 inflicting the punishment is not legal and sustainable and same is set aside. The matter is remitted to the disciplinary authority to pass order afresh in accordance with law.

9. Accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2017
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