

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18949 of 2008

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Mahesh Das s/o Late Mahavir Das, r/v- Shyampur, P.S. – Kotwali, District – Munger at present residing at Supaul in the house of Sri Laxmi Prasad Sah, resident of ward no. 21 Supaul, P.S. – Supaul, District - Supaul

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Secretary, Building Construction Department, Government of Bihar, Patna
4. The Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna
5. The Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Government of Bihar, Patna
6. The Superintending Engineer, Building Construction Circle, Supaul, Government of Bihar, Patna
7. The Executive Engineer, Building Division, Supaul, District – Supaul
8. Assistant Engineer, Building Division, Supaul, District - Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. KALI PRASANNA DUBEY, Adv.
For the Respondent/s : Mr. P.K. Verma, Sr. Adv.
Mr. Suman Kumar Jha AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 22-02-2017

Heard Mr. Kali Prasanna Dubey learned counsel for the petitioner and Mr. P.K. Verma learned counsel for the State.

The petitioner by filing this writ petition seeks quashing of the order, as contained in Memo no. 513(E) dated 01.02.2008 (Annexure-1) issued under the signature of Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna by which the petitioner has been dismissed from the service.



The facts which are relevant for the disposal of this writ petitioner are that the petitioner was posted as Junior Engineer in the Building Construction Division, Supaul. Proceeding was initiated on the allegation that the petitioner took advance of Rs. 1,36,000/- on 05.03.2003 and 24.03.2003, but the petitioner did not complete construction work and kept the money with him, thereby, the petitioner committed temporary defalcation. The Enquiry Officer submitted his report, on the basis of which the petitioner was dismissed from service.

Learned counsel for the petitioner submits that the enquiry was not held in accordance with law. From perusal of the report of Enquiry Officer itself, it would appear from the explanation submitted by the petitioner that on information of the Presenting Officer the Enquiry Officer submitted his report, but neither any oral or documentary evidence was produced during the course of enquiry, nor the petitioner was allowed to cross-examine any witness. The petitioner was not even allowed to examine his own witness or produce any document in defense of his case. It is further submitted that for imposing major penalty the procedure as enumerated in Rule 17 of C.C.A. Rules, 2005 has not been followed.

Learned counsel for the State has submitted that the Enquiry Officer after following the procedure sent his report. The



only question arises as to whether enquiry was done in accordance with law? Rule 17 prescribed the procedure for imposing **major penalty**, as enumerated in **Clauses 6 to 10 of Rule 14** which runs as follows:-

Rule -14 – Minor and Major Penalties - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties :-

- (i) *censure;*
- (ii) *withholding of promotion;*
- (iii) *recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;*
- (iv) *reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect;*
- (v) *withholding of increments of pay without cumulative effect.*

Major Penalties:-

- (vi) *withholding of increments of pay with cumulative effect.*
- (vii) *save as provided for in clause (iv), reduction to a*



lower stage in time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

(viii) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(ix) compulsory retirement;

(x) removal from service which shall not be a disqualification for future employment under the Government;

(xi) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (x) or clause (xi) shall be imposed.



Rule – 17

Procedure for imposing major penalties :-

(9) If the government servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say any thing for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty.

From bare perusal of the provisions as contained in sub-rules 9 and 10, it would appear that once the delinquent files his show-cause the Enquiry Officer has to fix a date asking the Presenting Officer to adduce evidence oral and documentary and thereafter the Enquiry Officer would give notice to the delinquent to produce evidence if any, in defense of his case, but from perusal of Annexure – 8 the enquiry report, it appears that the Enquiry Officer has not followed the procedure and submitted his report on the basis of perusal of explanation of the petitioner and the information of the



Presenting Officer, but neither the Presenting Officer has adduced any evidence nor the Enquiry Officer allowed the delinquent to give evidence in defense of his case. Therefore, I find that the dismissal of the petitioner, on such enquiry report, is vitiated and bad in the eye of law.

Accordingly, the writ petition is allowed. The order passed by Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna vide Memo No. 513(E) dated 01.02.2008, as contained in Annexure-1 is set aside.

The matter is remitted to the Disciplinary Authority to proceed afresh in accordance with law.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2017
Transmission Date	NA

