

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.49 of 2017

Arising out of

Civil Writ Jurisdiction Case No. 18072 of 2015

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Ambika Choudhary, son of Late Bhadai Choudhary, resident of Village- Karmaini Khurd, P.O.- Maidhara, P.S.- Bikramganj, District- Rohtas (Sasaram), at present Choudhary Residency, Kusumpuram Colony near Leeds Asian School, Bailey Road, P.O.- Danapur Cantt., District Patna 801503.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Joint Secretary to the Government, Bihar, Patna.
3. The Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer-cum-Conducting Officer, Drafting Bridge, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Sasaram, Bihar.
6. The Executive Engineer, Rural Works Department, Works Division-2 Ara, Bihar, Patna.
7. The Assistant Engineer cum Presenting Officer, Rural Works Division-2, Ara, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s : Mr. Manish Kumar, A.C. to AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY



ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-07-2017

Seeking exception to an order passed by the learned Writ Court on 21.12.2016 in C.W.J.C. No. 18072 of 2015, this appeal has been filed under Clause 10 of the Letters Patent.

2. By an order passed on 03.05.2012, the appellant who was working in the department, was inflicted with a punishment of censure for three years and stoppage of two increments with cumulative effect. The learned Writ Court found that the appellant did not file an appeal against the aforesaid order under the Disciplinary and Appeal Rules within the limitation provided for and after his superannuation in January, 2015 had filed the writ petition. Finding there to be delay, the writ petition was dismissed.

3. In the memo of appeal it is indicated that after the major punishment was imposed upon the appellant, it came to his knowledge that on 11.06.2014 in the case of one Ram Vinay Sharma also similar set of allegations were levelled and departmental inquiry conducted but in his case only a minor punishment was imposed. Due to this, the appellant represented the matter and when this was not considered, he filed the writ petition.

4. Even though learned counsel for the respondents pointed out that there is no error in the order passed by the learned



Writ Court and on account of delay in approaching the Court, particularly after his retirement, the Writ Court has not committed any error, we are of the considered view that when with regard to an employee identically situated on 11.06.2014 certain action was taken and appellant wanted similar benefit to be granted, in all fairness, an opportunity should have been granted to the appellant to submit an appeal to the competent authority under the Bihar Government Servant (Classification, Control and Appeal), Rules and merely on the ground of delay the writ petition could not have been rejected.

5. That apart, the appellant has also made a grievance that the inquiry report was not supplied to him and this created handicap and caused prejudice to him in the matter of submission of an appeal.

6. Keeping in view all these factors and considering the interest of justice involved, we allow this appeal, quash the order passed by the learned Writ Court and direct that in case appellant prefers an appeal before the competent statutory authority under the Disciplinary and Appeal Rules within a period of 45 days from the date of receipt of a certified copy of this order, the Appellate Authority shall consider and take a decision on the appeal preferably within a period of three months of its presentation.

7. With the aforesaid, the Letters Patent Appeal stands



allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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