

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.883 of 2015
IN
Civil Writ Jurisdiction Case No. 3637 of 2007**

- =====
1. The State Of Bihar, through its Chief Secretary, Old Secretariat, Bihar, Patna.
 2. The Commissioner-cum-Secretary, Water Resources (Irrigation) Department, Bihar, Patna.
 3. The Deputy Secretary, Water Resources Department, Bihar, Patna.
 4. The Secretary, Minor Irrigation, Government of Bihar, New Secretariat, Bihar, Patna.
 5. The Joint Secretary, Minor Irrigation Department, Bihar, Patna.
 6. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
 7. The Superintending Engineer-cum-Enquiry Officer, Minor Irrigation Circle, Gaya.
 8. The Executive Engineer, Minor Irrigation Division, Gaya.
 9. The Executive Engineer, Minor Irrigation Division, Arrah.
 10. The Executive Engineer-cum-Conducting Officer, Minor Irrigation Division, Aurangabad.

.... Appellant/s

Versus

1. Subhash Singh, Son of Sri Sheo Pujan Singh, posted as Assistant Engineer, Main Canal Sub-Divisional, Bathnaha, District-Aurangabad, permanent resident of village- Mahadi Chak, P.S. Bihta, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R.B.P.Yadav, AAG 11

For the Respondent/s : Mr. Rajesh Kumar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 07-04-2017

Heard counsel for the appellants and counsel for the private respondent.

Perused the order of the learned Single Judge dated 20.9.2011. In the opinion of the Court, the order of the learned Single Judge does not suffer from any infirmity. The manner in



which the so-called departmental proceeding has been conducted and the order of punishment has been passed not by the disciplinary authority but by the appellate authority, the State government, has been taken note of by the learned Single Judge in following manner :

“4. The other technical plea raised by the petitioner is that in the instant case no charge-sheet was ever issued and served on the petitioner, as such, he was not given adequate opportunity of defending himself. Further it is submitted that the Enquiry Report of the Enquiry Officer was also never served on the petitioner asking him to refute the findings recorded by the Enquiry Officer that a sum of Rs. 50,859.38p remained unadjusted with the petitioner. In this connection, it is submitted that had the charge-sheet and the findings of the Enquiry Officer been served on the petitioner, he would have effectively refuted the same with reference to the letter of the Assistant Engineer bearing no. 22P dated 27.7.2001, Annexure-12 in which the Assistant Engineer categorically accepted that petitioner had executed the civil works concerning the advance given to him and the measurement showing such execution stood noted in the Measurement Book at page 482 and the bill for the amount of Rs. 50,859.38p submitted by the petitioner was kept pending at the level of the Executive Engineer for verification and endorsement and the Executive Engineer was responsible for not clearing the outstanding.

5. Counsel for the State has opposed the prayer and submitted that the charge-sheet may not have been served on the petitioner but the suspension order dated 2.2.1999, Annexure-3 is quite specific about the allegations made against the petitioner and, as such, even if the charge-sheet was not served on the petitioner, he had ample opportunity



to refute the allegations levelled against him.

6. I regret not to accept the aforesaid submission of the Counsel for the State. Perusal of the suspension order only indicates the allegation that too without any details, as such, in my opinion, the contents of the suspension order can never substitute for the formal charge-sheet. The Enquiry Report was also not served on the petitioner giving him opportunity to refute the findings of the Enquiry Officer. It is, thus, quite evident that not only the proceeding was initiated against the petitioner at the instance of the State Government vide resolution of the Government dated 18.2.1999 but also the punishment order dated 20.5.2002, Annexure-13 was passed by the joint Secretary at the instance of the State Government without serving the formal charge-sheet and the Enquiry Report on the petitioner and thereby petitioner was deprived of his opportunity to avail the remedy of appeal before the State Government.

7. On merits also the case of the petitioner that he executed civil work and took steps for adjustment of the advance given to him with reference to the entries of the Measurement Book does not appear to have been considered in the light of the representation of the immediate superior of the petitioner, namely, the Assistant Engineer contained in letter dated 27.10.2001. It is, thus, quite evident that not only on technical grounds but also on merit the case of the petitioner has not been appropriately dealt with by the authorities. For the reasons, aforesaid, I set aside the impugned punishment order no. 61 dated 20.5.2002, Annexure-13. Petitioner having been deprived of the remedy of appeal by the appellate authority, no useful purpose will be served by remitting back the mater for fresh consideration by the Disciplinary Authority, namely, the Engineer-in-Chief as



the Disciplinary Authority is not likely to take any different view than the one which was taken by the appellate authority while passing the punishment order dated 20.5.2002, Annexure-13.”

What makes things even more interesting is a letter No.616 dated 9.2.2016, issued under the signature of the Deputy Secretary, Minor Irrigation Department, Government of Bihar, which is addressed to the Executive Engineer, Minor Irrigation Division, Ara where the Government itself has accepted that there is no infirmity with the order of the learned Single Judge, there has been extraordinary delay in filing the appeal and there is no ground for filing such appeal. If this is the opinion, which has been communicated and is an official communication, this Court fails to understand as to what the State counsel is arguing for.

Appeal is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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