

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7784 of 2014

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1. Shriniwas Choudhary Son of Late Harihar Choudhary, resident of Village Mongolpur, Police Station Ithari, District Buxar at present Sail Baran Apartment 'A' Block, Flat No. 302, Sheikhpura Bagicha, Police Station Shastrinagar, District Patna- 800014

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna
4. The Secretary, Building Construction and Housing Department, Bihar, Patna
5. The Joint Secretary, Building Construction and Housing Department, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar

For the Respondent/s : Mr. Manoj Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-08-2017

Heard both sides.

2. The petitioner has filed this writ petition for quashing the order dated 23.12.2011, as contained in notification No. 14118(S), issued under the signature of Deputy Secretary (Vigilance), Road Construction Department, Government of Bihar, Patna whereby one increment has been withheld with non cumulative effect and punishment of warning was also given to the petitioner for the period 2000-2001 and the same has to be entered in his service book (Annexure-1).

3. While the petitioner was posted as Junior Engineer, Building Construction Department, Bettiah, vide letter No. 690 dated 13.03.1009 (Annexure-2) petitioner was served show cause asking him to explain the



following four charges:-

“(i) Without proper issuance of measurement book hereinafter referred to as M. B. No. 131 was used by him.

(ii) M. B. No. 131 used by him for more than 3 (three) years which is clear violation of the instructions contained in letter No. 2437 dated 31.12.1983 of Vigilance Department.

(iii) In construction of doctor’s quarter as Chanpatia 49% excess to the amount mentioned in the agreement was spent.

(iv) ‘Shal’ wood was not used in construction of doctor’s quarter at Chanpatia.”

4. The petitioner gave his show cause reply. The enquiry officer submitted the enquiry report and thereafter the petitioner was served second show cause notice but the same was not received by the petitioner. Thereafter, the petitioner was inflicted with the punishment of stoppage of one increment with cumulative effect vide order dated 18.07.2006, as contained in office order No. 179. Besides that, warning was also to be recorded for the year 2000-2001. The petitioner preferred writ petition being CWJC No.5236 of 2010 and this court vide order dated 23.11.2010 set aside the order inflicting punishment upon the petitioner with a liberty to the department to proceed afresh, in accordance with law. In pursuance of the order passed in CWJC No. 5236 of 2010 second show cause notice was issued to the petitioner. The petitioner filed his reply and after consideration of reply the department inflicted punishment of stoppage of one increment with non cumulative effect and warning for the year 2000-2001 (Annexure-1).

5. The learned counsel for the petitioner assailed the order on the



ground that the departmental proceeding was not held in accordance with law. The enquiry has to be held in view of the provision as contained in Rule 19 of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules) and evidence should have been adduced but no enquiry was held and order of punishment, although minor, is inflicted against the petitioner. The learned counsel for the petitioner further submits that the departmental proceeding was initiated for the occurrence happened in the year 1986. Articles of charge were served upon the petitioner in the year 1992 and for the first time the punishment was inflicted upon the petitioner in the year 2006. Mr. Rupak Kumar, the learned counsel for the petitioner further submits that any inaction or inefficiency of the petitioner does not amount to misconduct as the same do not cause any pecuniary loss to the Building Construction Department, Government of Bihar and, therefore, the punishment inflicted upon the petitioner is not sustainable. In support of his submission the learned counsel for the petitioner placed reliance upon the two judgments of this court reported in ***PLJR 2017 (3) 33 (Lallan Prasad Sharma v. the State of Bihar & Ors.)*** and the judgement reported in ***PLJR 2017 (3) 77 (Nawal Kishore Singh v. The State of Bihar & Ors.)***.

6. Per contra, the learned counsel for the State submits that minor punishment is inflicted and for that no full fledged enquiry is required. It is submitted that on the basis of the show cause filed by the petitioner it is apparent that petitioner used the measurement book (M. B.) No. 131 without its re-issuance and signature of the Executive Engineer or Assistant Engineer or Divisional Accountant, who are empowered to re-issue measurement book after the month of December of every year. The petitioner also admitted that he used the measurement book for more than one year six months without its re-issuance



from the competent authority. Therefore, the order of punishment does not require any interference.

7. On the basis of submission of learned counsel for the petitioner two questions fall for consideration. Firstly, as to whether the punishment inflicted against the petitioner is in accordance with CCA Rules and, secondly, the inaction or minor lapses on the part of the petitioner, causing no pecuniary loss to the department, does not amount to misconduct and, therefore, the departmental proceeding and the punishment is bad.

8. So far as second submission of the learned counsel for the petitioner that inaction or inefficiency on the part of the petitioner does not amount to misconduct, as the same does not cause any pecuniary loss to the Building Construction Department, Government of Bihar, therefore, the departmental proceeding initiated against the petitioner is bad and consequently any punishment inflicted is not sustainable is concerned and from the judgements relied upon by the petitioner in the case of *Lallan Prasad Sharma v. the State of Bihar* (supra) and *Nawal Kishore Singh v. the State of Bihar & Ors* (Supra) it is evident that the facts are quite different. In the aforesaid two cases the proceeding was initiated against an employee under Rule 43(b) of Bihar Pension Rules and in that context it was held that every inaction or inefficiency does not amount to misconduct as the same does not cause any pecuniary loss. For initiating a proceeding under Rule 43(b) of Bihar Pension Rules one principal condition is that if an employee committed any misconduct during his service period, which caused pecuniary loss to the Government, the Government may initiate proceeding under Rule 43(b) of Bihar Pension Rules. Therefore, I find that the submission of learned counsel for the petitioner is not at all acceptable on the facts and circumstances of the case in hand.



9. So far as first submission that no departmental enquiry is held under Rule 19 of the CCA Rules and, therefore, no punishment, even minor punishment, can be inflicted and the same is in violation of principles of natural justice and fair play, from the facts of the case, it appears that petitioner was charged that he used measurement book No. 131 without its proper issuance and he kept the same and used it for about three years in violation of instructions contained in letter No. 2347 dated 31.12.1983 of the vigilance department. Other charge is with regard to spending excess amount in repairing the quarter and use of sub standard material in fixing the doors. The petitioner was asked show cause and on perusal of the show cause of the petitioner the disciplinary authority inflicted only minor punishment, that is, stoppage of one increment with non cumulative effect and warning for the year 2000-2001.

10. From perusal of Rules 14, 17 and 19 of the CCA Rules, it appears that the punishment has been classified in two categories, minor and major. For major punishment the disciplinary authority has to hold full fledged enquiry, as envisaged under Rule 17 of CCA Rules, but for inflicting minor punishment no full fledged enquiry is at all required. The disciplinary authority, on perusal of the show cause of the delinquent employee, may inflict minor punishment if the delinquent employee himself in his show cause admitted his fault.

11. From the show cause of the petitioner, it appears that petitioner admitted that he used the measurement book for more than one and half year. Even at the end of December he did not get the measurement book re-issued by the Executive Engineer/Assistant Engineer/ Divisional Accountant although it is mandatory on the part of Junior Engineer to get it re-issued by the competent authority after making entry in the measurement book after December of every



year. The disciplinary authority on perusal of the show cause did not held him guilty on any other count but he found that the petitioner illegally used the measurement book without getting it re-issued and, therefore, the disciplinary authority inflicted minor punishment.

12. Having considered the facts aforesaid and the discussions made above, I do not find any merit in this writ petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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