

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.614 of 2017

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Raja Mian son of Mohammad Jallauddin Mian resident of village and P.O. - Baraon Kala, P.S. - Akorhi Gola (Dehri), District - Rohtas now presently resident of mohalla New Azimabad Colony, Shershah Street, Sector - D, P.S.. - Sultanganj and District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Minor Irrigation, Government of Bihar, Patna.
2. The Secretary-cum-Commissioner, Minor Irrigation, Government of Bihar, Patna.
3. The Co-ordinator, Minor Irrigation (Tubewell) Division, Bihar , Patna.
4. The Joint Secretary, Department of Minor Irrigation Government of Bihar, Patna.
5. The Deputy Secretary, Department of Minor Irrigation, Government of Bihar, Patna.
6. The Chief Engineer (North) Tueb Well Section, Muzaffarpur, District - Muzaffarpur.
7. The Superintending Engineer, Tubewell Division, Muzaffarpur, District - Muzaffarpur.
8. The Executive Engineer, Tubewell Division, Hazipur at Vaishali.
9. The District Magistrate, Buxar.
10. The Executive Engineer, Tubewell Division, Buxar.
11. The Block Development Officer, Dumraon, District - Buxar.

.... Respondents

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Appearance :

For the Petitioner/s : Md. Abu Haidar, Adv.

For the Respondent/s : Mr. Himanshu Kumar Akela, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-05-2017

Heard Md. Abu Haidar, learned counsel appearing for the petitioner and Mr. Himanshu Kumar Akela, learned AC to PAAG-2, for the State.

The petitioner has travelled a long way to question the order of punishment bearing Memo No. 3582 dated 29.8.2005 passed by the Joint Secretary, Minor Irrigation Department, Government of Bihar, whereby the petitioner has been visited with the following penalties:



- (a) Censure for the period 2002-03;
- (b) withholding of three annual increments with non-cumulative effect;
- (c) Restriction of salary for the suspension period to the subsistence allowance drawn by the petitioner;
- (d) Recovery of salary for the period 1.7.2002 to December, 2003 by treating the period as unauthorized absence.

A copy of the punishment order has been placed on record vide Annexure 2 to the supplementary affidavit.

The petitioner is also aggrieved by the appellate order bearing Memo No. 5082 dated 19.10.2016 whereby the Joint Secretary, Minor Irrigation Department has communicated the rejection of the appeal of the petitioner by the appellate authority thus confirming the punishment order bearing Memo No. 3582 dated 29.8.2005 impugned at Annexure 1 to the writ petition.

Facts of the case briefly stated is that the petitioner serving as Junior Engineer in the Tube Well Division, Buxar was transferred under the Chief Engineer, Tube Well Division, Muzaffarpur on 20.7.1999 but a request was made by the Executive Engineer, Tube Well Division, Buxar for stay of his transfer and who vide his letter no. 975 dated 30.11.1999 present at Annexure 4 requested the Engineer-in-Chief cum Project Coordinator, Tube Well Division to allow the petitioner to continue at Buxar and as a consequence the



petitioner continued at Buxar. Subsequently, vide Memo No. 671 dated 28.6.2001, the petitioner was sent on deputation to Dumraon. The charge is that though the Executive Engineer, Tube Well Division, ordered for relieving of the petitioner for his joining at the Tube Well Division, Muzaffarpur on 8.7.2002 but the petitioner gave his joining on 22.12.2003 and it is for this act of the petitioner that he was proceeded by service of a charge sheet, a copy of which has been placed on record vide Annexure 9 to the second supplementary affidavit filed today. The charges levelled were of indiscipline, misconduct and of violating the orders of his superior. The description of the charge present in the charge memo would reflect that primarily the petitioner was being proceeded for violating the order dated 8.7.2002 and giving the charge only on 22.12.2003.

The petitioner gave his reply to the charge memo, a copy of which is at Annexure 10 to the supplementary affidavit filed today in which he has stated that he was on deputation following the order dated 22.6.2001 (Annexure 3) and that the relevant order dated 8.7.2002 was never served upon the petitioner. He has mentioned that while during his deputation at the Block office at Dumraon that vide letter no. 1732 dated 11.12.2003, he was relieved on 21.12.2003 and within 24 hours he gave his joining at Tube Well Division, Muzaffarpur on 22.12.2003. It was explained by the petitioner that since the relieving order itself was never received by him, that he did



not give his joining earlier. He has further explained that no sooner the relieving order was served that he has given his joining.

The enquiry report has been placed at Annexure A to the counter affidavit and the Enquiry Officer after examining the matter threadbare has recommended for dropping the proceedings by issuing a warning to the petitioner for being careful in future. The opinion of the Enquiry Officer was not accepted by the Disciplinary Authority who also did not bother to issue a note of disagreement before issuing the order of punishment bearing Memo No. 3582 dated 29.8.2005, a copy of which has been placed on record vide Annexure 2 to the first supplementary affidavit.

The petitioner questioned the order of punishment by filing an appeal and which was rejected on limitation by the order dated 13.11.2007 impugned at Annexure 22 to the writ petition. The order was questioned by the petitioner before this Court in C.W.J.C.No. 17069 of 2007. Vide order dated 4.1.2016 present at Annexure 23 to the supplementary affidavit the order was quashed. The writ petition was allowed and the appellate authority was directed to dispose of the appeal of the petitioner on merits subject to payment of cost of Rs.500/-. It is following such order of this Court that vide Annexure 1, the appeal has again been dismissed thus confirming the order of penalty and feeling aggrieved the petitioner is before this Court.

Having heard learned counsel for the parties and having



perused the records, I am of the opinion that the writ petition is fit to be allowed. It is a matter of record that although a minor penalty has been imposed on the petitioner who has since superannuated on 31.12.2011, but the respondents have chosen to take recourse to the procedure provided under Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules'), for imposition of major penalty. There is however, no illegality in the action of the respondents to follow the exhaustive procedure provided under Rule 17 of 'the Disciplinary Rules' which is in tune with the statutory provisions underlying Rule 19(1)(b) of 'the Disciplinary Rules' enabling the disciplinary authority to follow procedure provided under Rule 17. It is now to be seen whether once the respondents have chosen to follow the detailed procedure provided for imposition of major penalty under Rule 17 of 'the Disciplinary Rules', whether they have adhered to the mandatory requirement. Annexure 9 to the supplementary affidavit filed on 9.5.2017 is the copy of the charge sheet and simply refers to the allegations without mentioning any evidence either oral or documentary as mandated under Rule 17(3) of 'the Disciplinary Rules'. In other words, the charge sheet drawn against the petitioner is not in tune with Rule 17(3) since it nowhere mentions the evidence either oral or documentary on which the charges are proposed to be sustained.



Adverting to the merits of the case, a plain reading of the charge memo would show that it is for alleged disobedience of the relieving order bearing No. 494 dated 8.7.2002 that the petitioner has been proceeded and visited with the penalty. The petitioner in his reply in response to the charge sheet, a copy of which is present at Annexure 10 to the supplementary affidavit filed on 9.5.2017, has specifically stated that the said relieving order was served on him through letter No. 1732 dated 11.12.2003 only on 21.12.2003 and within 24 hours of its receipt, he gave his joining on 22.12.2003. Now there is nothing on record of the proceedings to contest this stand of the petitioner nor the department through the Presenting Officer have chosen to lead any evidence to falsify the stand of the petitioner. In fact it is bearing in mind this serious lacuna in the proceeding that the Enquiry Officer has proceeded to recommend for dropping of the proceedings with warning to the petitioner vide his report annexed at Annexure 'A' to the counter affidavit. The illegality committed by the respondents continue to invade the proceedings, inasmuch as the disciplinary authority despite recommendation of the Enquiry Officer for dropping the proceedings by a mere warning, has not chosen to issue any notes of disagreement as mandated under Rule 18(2) and (3) of 'the Disciplinary Rules', rather he has simply proceeded to impose penalty on the petitioner vide order bearing No. 276 dated 28.9.2005, a copy of which has been impugned at Annexure 2 to the



supplementary affidavit filed earlier and which was questioned by the petitioner in appeal resulting in the order of confirmation dated 13.4.2007 impugned at Annexure 22 to the writ petition. These orders were questioned by the petitioner before this Court in C.W.J.C.No. 17069/2007 and vide Annexure 23 to the supplementary affidavit earlier filed, the appellate order was quashed with the liberty to the petitioner to file a fresh appeal together with cost resulting in the impugned order dated 19.10.2016 at Annexure 1 to the writ petition.

As I have already indicated these orders are passed without any notes of disagreement served on the petitioner on the enquiry report which recommended for dropping of the proceeding with a mere warning.

From the discussions so made hereinabove it is clear beyond any shadow of doubt that the present proceedings is not only clothed with gross statutory violation rather even on merit, there is no evidence to contest the stand of the petitioner that no sooner did he receive the relieving order that within 24 hours thereafter, he has given his joining. At the cost of repetition I put it on record that no evidence either oral or documentary was led by the department through the Presenting Officer to contest this stand.

The punishment order is thus based on no evidence.

In result, the order of penalty passed against the petitioner dated 29.8.2015 impugned at Annexure 2 to the supplementary



affidavit together with the appellate order dated 19.10.2016 impugned at Annexure 1 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed. The consequences shall follow in the form of release of difference of salary for the suspension period as well salary for the period 1.7.2002 to December, 2003.

Let the consequences flowing from the present judgment be provided to the petitioner within a period of three months from the date of receipt/ production of a copy of this order.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2017
Transmission Date	NA

