

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10070 of 2011

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Harendra Mani Tripathi, S/o-Shri Bhagwan Mani Tripathi, Resident of Village +
P.O- Gobaraura, P.S-Lauria, District- West Champaran, At Present posted as
Assistant Engineer, Road Construction Department, Road Division, Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Road Construction Department, Bihar, Patna.
2. The Joint Secretary Road Construction Department, Government of Bihar, Patna.
3. The Additional Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, Road Anchal, Road Construction Department, Darbhanga.
5. The Executive Engineer, Road Anchal, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Kumari Shashi Bala Verma, Advocate
For the Respondent/s : Mr. Lalan Kumar, A.C. to G.P. 9

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 19-08-2017

Challenging the order, (Annexure-14), dated 18.04.2011
imposing punishment of stoppage of one increment without
cumulative effect, this writ petition has been filed.

Having heard learned counsel for the parties, it is seen
that while petitioner was working as Assistant Engineer in the
department in question, on account of non-settlement of bill of a
contractor based on a preliminary inquiry conducted and a report
submitted to the competent authority on 08.09.2009 a charge-sheet
was issued to the petitioner vide Annexure-1 on 09.04.2010. Along



with the charge-sheet, the imputation of misconduct, two in number, were implicated and the report of the preliminary inquiry formed part of the documents supplied to the petitioner in the charge-sheet along with various other documents, as are evident from Annexures- 2, 3, 3A, 4, 5 etc. After the aforesaid imputation of misconduct along with relevant documents was served on the petitioner, petitioner submitted his detailed explanation to the same vide Annexure-11 and in a detailed explanation he gave his defence and submission to the allegations levelled. However, vide order (Annexure-12) dated 08.10.2010 the Disciplinary Authority by narrating the fact about issuance of the charge memorandum, submission of the explanation by the petitioner on 19.04.2010 imposed the punishment without advertent to consider the defence and explanation of the petitioner, discussing them and thereafter either accepting them or rejecting them by showing application of mind and by passing a speaking order. The appeal filed by the petitioner vide Annexure-13 was also dismissed by the Appellate Authority vide Annexure-14 in a similar fashion without advertent to consider the grounds raised in the memorandum of appeal.

Even though various grounds are raised in the writ petition and they are refuted by the respondents, the fact remains that even if in case pertaining to imposition of minor punishment like



stoppage of increment without cumulative effect, it is incumbent upon the Disciplinary Authority to consider the defence and explanation of the petitioner, accept it or reject it by passing a speaking order showing application of mind. In the present case, the order (Annexure-12) passed by the Disciplinary Authority is neither a speaking order nor does it show as to how and in what manner the defence and explanation of the petitioner was considered and it also does not indicate as to why the defence of the petitioner is being rejected, what are the reasons for rejecting them and there is no finding recorded that for reasons indicated therein the allegations levelled in the charge-sheet are accepted or found to be proved and consequently the punishment imposed. On the contrary, the Disciplinary Authority simply narrates that he has considered the explanation of the petitioner, rejects it and records the punishment to be imposed.

In my considered view, as a punishment, even minor in nature, has adverse consequence on the employee's career, it has to be done by following the principles of natural justice which warrants consideration of the defence or explanation of the employee, its discussion and its acceptance or rejection by a speaking order showing application of mind. This principle of law having not been followed in the present case either by the Appellate Authority or by



the Disciplinary Authority, this petition is liable to be allowed on this count alone. Accordingly, this writ petition is allowed, order (Annexure-12) dated 18.10.2010 passed by the Disciplinary Authority and the order Annexure-14 dated 15.04.2011 passed by the Appellate Authority are quashed. The Writ Petition stands allowed and disposed of.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	22.08.2017
Transmission Date	

