

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13329 of 2010

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Rekha Singh, W/o late Akshyabat Prasad Singh, R/o Village- Maharana Pratap Nagar, P.O.- Bhagwan Bazar, P.S. Bhagwan Bazar, Distt- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Govt. Of Bihar, New Secretariat, Patna.
3. The Director, Land Acquisition and Rehabilitation, Water Resources Department Govt. of Bihar, Patna.
4. The Special Land Acquisition -cum-Conduction Officer, Gandak Project, Muzaffarpur.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar Verma, Advocate
For the Respondent/s : Mr. Harishankar Roy, A.C. to A.G.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-12-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The original petitioner namely, Akshyabat Prasad Singh, had died and on his place his wife namely, Rekha Singh has been substituted. It is not necessary to give details of the facts as in the present case challenge has been made with regard to the procedure which has been followed by the disciplinary authority as having been claimed that the disciplinary authority while differing with the opinion of the inquiry officer was obliged to record his disagreement separately and was to furnish the same to the deceased-employee and



after receipt of the explanation could have passed the order accordingly.

3. The husband of the petitioner and other Amins were deputed to take measurement of the land including recording of number of trees with specification standing over the land, which was under acquisition. It was found, inquiry report was wrong and they have committed illegality in giving the report with regard to the standing trees, arrived to tentative finding that their wrong report has caused financial loss of Rs.14,20,806/- to the State. The charge-sheet was served upon the petitioner, mentioning three charges. The inquiry officer, after conducting the inquiry submitted inquiry report, recorded finding that charge nos.1 and 2 have not been proved, with regard to third charge finding has been recorded that he had not maintained proper precaution. The same was submitted to the disciplinary authority, who issued show cause ultimately, final order of punishment dated 03.09.2008 has been passed against the husband of the petitioner, which are as follows:-

- (a) Nothing beyond subsistence allowance shall be payable for the period of suspension but which shall otherwise be counted for the purpose of pension;
- (b) Stoppage of all promotions;



(c) Stoppage of three increments with non cumulative effect and reverting him to a lower pay scale.”

4. Against the aforesaid order of punishment, the husband of the petitioner filed an appeal, which has been rejected vide order dated 02.12.2008, not dealing with the matter in issue.

5. In *Punjab National Bank and Ors. vs. Kunj Bihari Mishra*, reported in *1998(7) S.C.C. 84*, the Hon'ble Supreme Court dealing with the same situation has held that, in case of difference of opinion by the disciplinary authority with the finding of the inquiry officer, the proper procedure has to be followed that the disciplinary authority will record disagreement separately, would serve upon the delinquent and after receipt of the explanation suitable order would be passed by the disciplinary authority, but in the present case, the procedure, as stated above, has not been followed.

6. This Court is not required to deal with case on merit as Ram Janam Bhakta was also a member of the team, which had made inspection and gave its report with regard to the land and standing tress, he was also proceeded departmentally along with the husband of the petitioner and was also awarded the identical punishment, he also challenged the punishment in C.W.J.C. No.1675 of 2010, which



has been allowed and the matter has been remanded back to the disciplinary authority. The order has been tested in appeal before the Division Bench in L.P.A. No.1938 of 2011 and the said appeal has been rejected by the Division Bench. The case of the husband of the petitioner is identical to the case of Ram Janam Bhakta and holds the same field.

7. In such view of the matter, the order of the disciplinary authority dated 03.09.2008 and the order of the appellate authority dated 02.12.2008 are quashed. The matter is remanded back to the disciplinary authority, if they so like, may proceed further with this matter in accordance with law.

8. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	14.12.2017
Transmission Date	N/A.

