

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Civil Writ Jurisdiction Case No.14161 of 2010

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1. Lakshmi Narayan Sharma S/O Late Raghubar Sharma R/O Vill.- Kela Bigha,  
P.O.- Telhara, P.S. Telhara, Distt.- Nalanda At Biharsharif, Presently Posted As  
Executive Engineer, Rural Works Department, Division No.2, Munger

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Road Construction Department Government Of Bihar,  
Bishweshwaraiya Bhawan, Bailey Road, Patna
3. The Engineer-In-Chief - Cum - Additional Secretary - Cum - Special Secretary  
Road Construction Department, Government Of Bihar, Bishweshwaraiya Bhawan,  
Bailey Road, Patna
4. The Deputy Secretary, Vigilance Road Construction Department, Government  
Of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna
5. The Superintending Engineer Rural Engineering Organization, Work Circle,  
Bagalpur, Presently Munger
6. The Executive Engineer Rural Engineering Organization, Work Division,  
Munger
7. The Departmental Enquiry Commissioner Personnel And Administrative  
Reforms Department, Government Of Bihar, Patna

.... .... Respondent/s

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### Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate.  
Mr. S.B.K.Mangalam

For the Respondent(State): Mr. Anand Kumar, AC to AAG 3

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 27-03-2018**

Heard the parties.

2. At the first instance the petitioner has filed an application  
for quashing the enquiry report dated 13.1.2009 passed by the  
Departmental Enquiry Commissioner, Personnel and  
Administrative Reforms Department, Government of Bihar,  
Patna (respondent no.7) and during the pendency of this writ



application, the order of removal from service vide Memo No.13230 dated 3.9.2010 (Annexure-19) has been passed by the Additional Secretary, Road Construction Department, Government of Bihar, Patna whereafter review application has also been rejected vide Memo No. 8845(S) dated 4.8.2011 (Annexure-20) both orders have been challenged in this writ petition vide I.A. No. 8520 of 2011 and made a prayer that after setting aside the order of removal he should be reinstated in service and paid consequential relief.

3. The petitioner was appointed as Assistant Engineer in the Road Construction Department in the year 1981, later on he was promoted to the post of Executive Engineer in the year 2002, his services was handed over to the Rural Engineering Organization, was posted at the relevant time as Executive Engineer, Rural Engineering Organization, Work Division, Munger. Hon'ble Chief Minister was to inaugurate to Satgharwa Water Reservoir Project on 6.2.2004 as the Hon'ble Chief Minister was to visit that place, naturally other dignitary and Officers of District Administration was to remain present but road condition of that route up to Water Reservoir Project site was not motorable condition, as the Carcade of the Hon'ble Chief Minister was to pass through, in order to make function



successful, looking to the bad condition of the road, the District Magistrate vide letter no. 257 dated 3.2.2004 (Annexure-1) requested the Executive Engineer to repair the road and make it motorable from his own end as it was a visit of Hon'ble Chief Minister on 6.2.2004. The time was very short, as emergently the road was to be repaired before due date so the repair work was to be completed on and before 5.2.2004.

4. The said letter was received by the office of the Executive Engineer on 4.2.2004, immediate compliance was needed, as Satgharwa Reservoir Project was falling in Suryagarha Sub Division, the petitioner was Executive Engineer of that area. When the petitioner received that letter addressed from the office of the District Magistrate, the Junior Engineer, namely Sikandar Mandal was present and later on Rabinder Narain Sanghi, Junior Engineer also joined, Awadh Kishore Yadav, Assistant Engineer was incharge of the Suryagarha Sub Division. He was accordingly informed through telephone of such letter received from office of the District Magistrate and directed the Assistant Engineer as well as junior Engineer to complete the repairing of the road and make it motorable so that inaugurational function would pass through peacefully and successfully. Sri Awadh Kishore Yadav, Assistant Engineer on



discussion has suggested that area is very difficult and unapproachable and it would be very difficult to carry the load road materials to the site spot. as contract work of the department through Sadanand Prasad Singh was going on and suggested that the department should take help of Sadanand Prasad Singh for carrying out the repairing work of the road. Awadh Kishore Yadav, Assistant Engineer prepared the estimate cost of repair of the road of Rs.5 lacs, on that basis, vide letter no.146 dated 5.2.2004 a demand of Rs.5 lacs was made and in anticipation of allotment of fund the work was started. Under the wrong notion in the first letter vide letter no. 343 dated 23.3.2004 the name of Sadanand Prasad Singh as contractor was mentioned to have carried out the work, as the work done departmentally and just thereafter vide letter no. 362 dated 25.3.2004 he corrected the typographical mistake and clarified, the work was carried out by the department.

5. From the record it appears that the Junior Engineer had written a letter to the Assistant Engineer dated 12.4.2004 (Annexure-2) in which he has mentioned the condition of the road was bad not motorable condition and it was very difficult for the public to move on that road. An estimate of Rs.5 lacs was prepared but on account of financial constrain work could



not be completed but it was made motorable which incurred cost of Rs.93,319/- and requested to make available the said amount so that proper payment could be made.

6. In turn, the Assistant Engineer vide letter no.70 dated 23.9.2004 (Annexure-4) addressed the letter to the Executive Engineer to do needful attaching the copy of the letter of the Junior Engineer for payment of the aforesaid amount. In view of the letter of Junior Engineer approved by Assistant Engineer, the petitioner vide letter no. 146 dated 5.2.2004 (Annexure-5) addressed to the Chief Engineer-cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar requested for allotment of Rs.5 lacs for completion of the work. In pursuance of the letter of the Assistant Engineer, the petitioner vide letter no.919 dated 8.10.2004 (part of Annexure-A) requested the Additional Secretary giving details of the events mentioned the work could not be completed on account of paucity of time and paucity of fund, only repair work could be done by the department which incurred the cost of Rs.93,319/-.

7. He requested many time to the Assistant Engineer to provide the details and value of the work, ultimately vide letter no.70 dated 23.9.2004 (Annexure-4) raised the demand of



Rs.93,319/-. The inauguration was done very smoothly and successfully the Officers of the administration as well as dignitaries could easily reach to the place of inauguration which was appreciated by Hon'ble Minister Sri Upendra Prasad Verma. The petitioner was transferred from there and Sti Triloki Nath Choudhary succeeded him.

8. In the meantime, a writ petition was filed by Sadanand Singh vide C.W.J.C. No.16242 of 2004 in which he had taken a plea that on the eve of visit of Hon'ble Chief Minister as the work of inauguration, there was no time for tender or agreement his service was requisitioned for repair of the road which he had done successfully but payment has not been made. The case was taken up on 13.9.2006 the Court directed for filing of counter affidavit and on 15.11.2006 the Court has recorded that the department has taken contradictory stand in the matter of carrying out the repair work as in letter dated 23.3.2004, it has been mentioned the fact that work was executed by Sadanand Singh, contractor but just after two days vide letter no.362 dated 25.3.2004 another letter was issued by the petitioner in which he mentioned about typographical error of mentioning contractor claiming that the work was carried out by the department and he had made a demand of Rs.93,319/-. In the above letter the



estimate was made of Rs. 5 lacs but vide letter no.929 dated 8.10.2004, demanded only Rs.93,319/- claiming that the work was done by department.

9. Looking to the contradictory stand by the department the Court refused to pass a positive order in favour of Sadanand Singh but recorded that false statement has been made in order to deprive the claim of the petitioner for the work done by him and finally directed the order may be placed before the Commissioner-cum-Secretary, Rural Engineering Organization who will enquire into the matter in detail and first find out the erring officials who had filed false and misleading affidavits in this regard and take appropriate actions against them. Then estimated amount, if any, to be paid to the petitioner. The order in this regard must be a speaking order and must be communicated to the petitioner within a period of one month from the date of production of this order before the Secretary. The Secretary would be well advised to consider, if no work was done, why money was demanded and why technical sanction was granted later.

10. In pursuance of the order passed by this Court the matter was placed before the Secretary Rural Engineering Organization for consideration of the claim of Sadanand Singh who had made



a demand of Rs.5 lacs for the work done by him, refused to make payment as has arrived to a finding that work was not carried out as well as joint inspection team headed by the Chief Engineer gave his opinion that the new road had been constructed by the Central Agency under Pradhan Mantri Gram Sarak Yojna and it is very difficult to verify the claim of execution of the work by contractor and has held that those letters have been written by the Executive Engineer with petitioner with an intention to misappropriate the Government fund and joint inspection team has suggested for initiation of a departmental proceeding against the then Executive Engineer i.e. the petitioner and held that the work was not done as per the norms, the contractor cannot claim amount from Government, if so like, he may recover the amount from Lakshmi Narayan Sharma, Executive Engineer, Awadh Kishore Yadav, Assistant Engineer and Rabindra Narain Sanghi, Junior Engineer and rejected the claim of the contractor and side by side directed to initiate a departmental proceeding for making wrong statement which created confusion and embarrassment to the State Government.

11. In pursuance thereof the Deputy Secretary, Vigilance, Road Construction Department, Bihar Patna served a letter vide



letter no.11686 dated 6.9.2008 to the petitioner attaching the charge-sheet in Prapatra K and asked the petitioner to file explanation within 15 days of charges mentioned in the charge sheet dated 25.8.2008 wherein it has been mentioned that on the eve of visit of Hon'ble Chief Minister on 6.2.2004 for construction of Dharhara Kajra and Dasrathpur to Belgama road vide letter no. 362 dated 25.3.2004, the request for allotment of Rs.5 lacs was made in which it has been mentioned that work was done departmentally but before, vide letter no. 343 dated 23.3.2004 reflects that the work was done by the contractor and again vide letter no.919 dated 8.10.2004 (part of Annexure-A) wherein it has been mentioned, as fund for completion of work was not made available only repair was carried work in which the cost was incurred of Rs.93,319/- was demanded. All these letters are contradictory to each other.

12. During proceeding of C.W.J.C. No. 16242 of 2004, on account of contradictory stand, a confusion was created and caused embarrassment to the department and Government had to cut sorry figure. The aforesaid acts constitutes the act of indiscipline and negligence, on receipt of charge-sheet the petitioner wrote letter vide letter no.211 dated 20.9.2008 (Annexure-10) stating that in the charge sheet, letter no.362



dated 25.3.2004, letter no. 343 dated 23.3.2004 and letter no. 919 dated 8.10.2004 having been mentioned but those documents were not attached with charge sheet, requested for supply of the said letter as well as letter no. 1044 dated 6.10.2006 written by Ramesh Prasad Singh was not attached with the charge sheet requested to supply the same. The matter was referred to Commissioner of Enquiry. The petitioner filed his detailed explanation-cum-statement wherein he has explained his stand and there also criticized the stand of the Junior Engineer and Assistant Engineer which they took vide letter dated 6.10.2006 showing their ignorance for the execution of the repairing of road, is completely incorrect and misleading. On the basis of the letter of the Junior Engineer, the Assistant Engineer had written letter vide letter no.70 dated 23.9.2004 informing the execution of work and made a demand of Rs.93,319/- and on that basis he had written letter to the Additional Secretary for the payment of the said amount vide letter dated 8.10.2004. So stand taken by the two Officers, later on, are completely wrong, misleading. During enquiry the facts emerged that Sikander Mandal was also Junior Engineer at the relevant time at Suryagarha who vide letter dated 21.2.2004 has informed the Executive Engineer for successful execution of



work in such a short span of time and as such explanation dated 19.9.2008 and 29.9.2008 submitted by Awadh Kishore Yadav and Rabindra Narin Sanghi wherein the stand was taken, that repair work was done by the Sikandar Mandal, Junior Engineer and they did not know what records were maintained by Sri Mandal that he had submitted the estimate which was prepared on the dictation of the Executive Engineer which he had given to petitioner though estimate should have been routed through the Assistant Engineer, namely Awadh Kishore Yadav having shown ignorance of execution of work but said that work was done by Sikander Mandal and on oral direction of Executive Engineer, made claim for Rs. 93,319.

13. It appears that during enquiry, Rabindra Narain Sanghi was examined and cross-examined by the petitioner and the Enquiry Officer has not arrived to a finding that work was not carried out rather has arrived to a finding that work was done by Sikander Mandal though he was transferred from there but illegally the petitioner had kept him and found charges were proved against the petitioner. He was served the enquiry report against which the petitioner filed second show cause giving details of his defence which did not satisfy the Disciplinary Authority, ultimately the impugned order has been passed



against the petitioner.

14. It will be relevant to mention that for the same incident Awadh Kishore Yadav, the then Assistant Engineer and Rabindra Narain Sanghi the then Junior Engineer were also put departmental proceeding. Identical charges were framed in their cases also the enquiry report was submitted against them.

15. It appears from the office notes (Annexure-22) that the matter was placed before the Chief Engineer-cum-Additional Secretary-cum-Special Secretary who on consideration of facts and circumstances formed an opinion, that as there was no defalcation of the Government money at most only reflects their intention to misappropriate suggested the punishment against the petitioner for stoppage of three increments with non-cumulative effect. Against Awadh Kishore Yadav Assistant Engineer and for Rabindra Narain Sanghi, Junior Engineer punishment was suggested for stoppage of two increments with non-cumulative effect. The matter placed before the Secretary, Road Construction Department who directed the punishment of removal from services to all the three persons, namely present petitioner, Awadh Kishore Yadav, Assistant Engineer and Rabindra Narain Sanghi, Junior Engineer.

16. The matter was placed before the then Minister and he



was agreeable with the proposal of the Secretary. As per Disciplinary and Appeal Rule the matter was referred to the Bihar Public Service Commission for its concurrence but Bihar Public Service Commission has refused to grant concurrence of the proposed punishment as it was not binding on the Government, the impugned order of removal from service has been passed against the petitioner but Awadh Kishore Yadav and Rabindra Narain Sanghi were awarded the punishment of stoppage of three increments with cumulative effect and for rest period of service they would be kept out from non-work division. The order of removal has been affirmed by Reviewing Authority.

17. Learned counsel for the petitioner submits that the Commissioner of Enquiry did not conduct the departmental enquiry as per procedure laid down as per Rule 17 of the Discipline and Appeal Rules, 2005. He was not supplied necessary document even after the demand. At the same time, the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary recommended for awarding the punishment of three increment with non-cumulative effect, ignoring the opinion of the Engineer-in-Chief as well as opinion of the Bihar Public Service Commission the petitioner has been inflicted the



punishment for removal from service whereas for the same identical charges against two persons, the order of punishment has been passed only for stoppage of two increments with cumulative effect. There should be uniformity in passing the order of punishment when nature of allegations are identical, charges have also been found proved there should not be indiscrimination in awarding the punishment meted out to the petitioner. In support his submission the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Punjab v. Rakesh Kumar, reported in (2008) 12 SCC 33=2009(1) PLJR 187 SC** and **State of Uttar Pradesh and others v. Raj Pal Singh, reported in (2010) 5 SCC 783** whereas learned counsel for the State has submitted that the enquiry was conducted as per the procedure laid down, documents were produced, letters of Rabindra Narain Sanghi and Awadh Kishore Yadav were placed before the Enquiry Officer, inasmuch as Rabindra Narain Sanghi was examined and cross-examined by the petitioner and on that basis the finding of charges have been found to be proved by the Enquiry Officer. He has further submitted that the Court should not interfere unless the order of punishment is shocking disproportionate. Normally the Court would refuse to interfere when the person



was holding the post of trust. The Executive Engineer hold the post of trust, intended to defraud the Government and tried to misappropriate the Government fund. The question of equation of punishment does not arise as the petitioner was holding higher post than two persons were holding lower post and it was found that no work was done, even than the effort was made to act de hors to the interest of Government. He has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Regional Manager U.P. SRTC, Etawah and others v. Hoti Lal and another, reported in (2003)3 SCC 605** and **Central Industrial Security Force and others v. Abrar Ali, reported in (2017) 4 SCC 507**.

18. Having considered the rival contentions of the parties and string of events as stated hereinabove, the then Hon'ble Chief Minister was to inaugurate Satgharwa Water Reservoir Project on 6.2.2004, the District Magistrate, Munger addressed a letter to the Executive Engineer to make necessary arrangement from his end for repair of the road and make it motorable so that inauguration could be done successfully. In pursuance thereof petitioner had written a letter dated 23.3.3004, gave estimate of Rs.5 lacs where it has been mentioned for execution of work by the contractor but in quick succession, vide letter dated



25.3.2004 informed that it was done by the department, claimed for Rs.5 lacs for completion of work but later on by another letter dated 8.10.2004 on the basis of the letter of the Assistant Engineer he raised the demand of Rs.93,319/- for payment. It also appears from the enquiry report that there is no dispute that the work was not carried out and it was made motorable and it is also a fact that Rabindra Narain Sanghi was Junior Engineer had addressed a letter to the Assistant Engineer claiming the amount of Rs.93,319/- wherein it has been mentioned that proper repair could not be done but while making it motorable it has incurred the expenses of the said amount and the same should be made available and on that basis Assistant Engineer has also demanded for the said amount by letter no.70 dated 23.9.2004 also requested for release of the aforesaid amount annexing the letter of Junior Engineer and on that basis the petitioner had written a letter for release of the fund. But it appears that Assistant Engineer and Junior Engineer resiled from earlier stand had shown their ignorance by writing a letter dated 6.10.2006 for execution of the work of repair but during enquiry they have taken a stand that work was handed over to Sikander Mandal, not to Sri Sanghi and Yadav they have taken plea that Rabinder Narain Sanghi had written that letter of



estimate as well as claim of Rs.93,319/- on the direction and dictation of the petitioner.

19. This Court is of the view that Rabindra Narain Sanghi and Awadh Kishore Yadav were delinquent employees they were also charge-sheeted for same charge naturally in order to save their skin they charged goal post and shifted all their responsibilities upon Executive Engineer inasmuch as they have changed their stand after two years that no work was done by them and letter was drafted on the direction of the petitioner, so letters of those persons cannot carry credibility and in this case also one of the player is Sikander Mandal who should have been brought to the enquiry as well as District Magistrate at whose instance the work was carried out. They should have been examined as witness who were the best person to explain what had happened during that period in connection with carrying out the repair work and inaugurated by the Hon'ble Chief Minister. There is no denial from the State the inauguration was done by the Chief Minister, naturally other dignitaries including officials of District Administration must have participated the function. It is also important to note that punishment was suggested by the Engineer-in-Chief stoppage of three increments with non-cumulative effect but the Secretary, Road Construction



Department has recorded as they were intending to misappropriate the money of Government for construction of road, in fact no construction of road was made as well as caused embarrassment before the Court that led to an order of removal from service. Equality is not required only for fairness in holding of enquiry but fairness is also required including non-discriminatory action by the department in the matter of awarding punishment also.

20. In the present case both the persons who were charge sheeted along with petitioner were awarded punishment of stoppage of three increments with cumulative effect but in the case of the petitioner highest punishment of removal from service which appears to this Court that is shocking disproportionate in view of the fact that there is no allegation of any Government money has been defalcated nor in any case the work was not carried out but on account of three conflicting letters caused embarrassment to the Government before the writ Court for that an extreme excessive punishment of removal has been passed cannot be sustained. The Hon'ble Supreme Court has put emphasis in maintaining infirmity in the matter of punishment also. The State has taken a plea that the Court should not interfere in the matter of punishment when the person



is holding the post of trust as in those case the fact was completely different as in those case the Government money was misappropriated but in the present case there is no allegation or charges have been proved of misappropriation of the Government fund but only has been recorded that they were intending to usurp the Government money and as such submission of the State cannot deviate this Court from quashing the order of punishment as well as the order of review, accordingly, both orders dated 3.9.2010 and 4.8.2011 are quashed, matter is remanded back to the Disciplinary Authority for considering the fact and circumstances and pass the order in accordance with law.

21. Accordingly this writ petition is allowed to the aforesaid extent.

22. Let the original record produced before this Court be returned to learned counsel for the State.

**(Shivaji Pandey, J)**

Vinay/-

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