

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4984 of 2006

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Chandra Pratap Pathak S/o lae Raghunath Pathak R/o village and P.O. Nagawa P.S.
Dubahar Dist Ballia (Utter Pradesh) At present Estimtor Public Health Division
Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar.
2. Engineer- in-Chief-cum-Special Secretary P.H.E.D
3. Regional Chief Engineer P.H.E.D Muzaffarpur
4. Superintendent Engineer P.H.E.D. Chhapra
5. Executive Engineer P.H.E.D. Chhapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bipin Kumar, Advocate

For the Respondent/s : Mr. Sanjay Kumar, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 15-03-2018

Heard counsel for the petitioner and the respondents.

2. One charge memo dated 22.10.2005 was served on the petitioner in connection with irregularities in tubewell related work for the period 1988-99.

3. From perusal of the charge memo it appears that the same was on the basis of a very stale charge. The petitioner therefore, submitted an application before the departmental authorities who were conducting the proceedings to make available some contemporaneous relevant documents since the allegation being enquired into is in relation to such stale charges and the substance of the allegation is that some articles were made available to him from the store and that



neither there is proper entry for the same nor the same has been found to have been utilized in the works undertaken by him in that period. It is alleged that the inventory of the material was not prepared in the site register at the Divisional Office, Chapra.

4. Counsel for the petitioner submitted that since the articles utilized in the tubewell work were to be obtained as per the specified procedure which involves several authorities/officers/Staffs at the store and site, certain documents were required, without which it was not possible to him to make out his defence as per requirement of principles of natural justice.

5. The State has filed counter affidavit. Except one vague assertion made in the counter affidavit that the petitioner has not visited the concerned office for getting relevant papers, there is no explanation on record for repeated letters written by the petitioner for making available relevant documents as contained in Annexures 2,3,4,5 and 6 and other Annexures to the writ petition which were never responded by the respondent authorities. It is specific assertion of the petitioner that the disciplinary authority has not considered the same. Even in response to the second show cause he had highlighted this fallacy in the proceedings.

6. Annexure 11 is the order passed by the disciplinary authority whereby charges against the petitioner had been found



proved and alleged loss of an amount of Rs. 57, 099.52/- has been directed to be adjusted.

7. Annexure 11 also shows a total non-consideration of the petitioner's repeated request made before the authorities for being granted the relevant documents in relation to the charge so as to enable him to file his representation/ response and to properly defend himself. The order passed by the disciplinary authority also does not show any consideration of any material or evidence. The order merely records that the government has examined the report of the Enquiry Officer and the charges have been found to be proved. Such a non-speaking order is itself not sustainable in the eye of law.

8. In view of the aforesaid consideration, this Court finds that the impugned order of punishment dated 27.02.2006 issued by the Engineer in-Chief-cum-Special Secretary, Bihar, Patna shows total non-application of mind and is devoid of any consideration and does not comply with the Principles of Natural Justice as is unsustainable in law and quashed.

9. Hence, the matter is remanded back to the disciplinary authority to consider the claim of the petitioner for being granted the documents in relation to charge as has been requested by the various communications and after ensuring compliance of Principles of Natural Justice and fair play, the disciplinary authority shall pass final



order in accordance with law.

10. With the aforesaid liberty, the writ petition is allowed.

As a consequence of quashing of the impugned order, the petitioner would be entitled to all the consequential benefits.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.03.2018
Transmission Date	

