

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2209 of 2011

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Niranjan Kumar Dutta S/O Late Mahendra Prasad Dutta Resident of Village Dalia,
P.S. Bounsi, District Banka At Present Posted As Executive Engineer (Current
Charge) Saran Canal Division, Marhaura, Water Resources Deptt. Marhaura,
District Chapra.

.... Petitioner

Versus

1. The State Of Bihar.
2. The Principal Secretary, Water Resources Deptt. Govt. of Bihar, Patna.
3. The Deputy Secretary, Water Resources Deptt. Govt. of Bihar, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Siya Ram Sahi and
Mr. Shailesh Kumar Sharma, Advocates.

For the Respondent/s : Mr. Pawan Kumar, AC to GA 1.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 03-01-2018

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

2. The present Writ Application has been filed for the
following reliefs:-

“i. For issuance of an appropriate writ for quashing the
notification of the Water Resources Deptt. contained in
memo no. 1467 dated 09.12.09 issued under the
signature of Deputy Secretary, Water Resources Deptt.
by which the petitioner has been inflicted punishment of
Censor for the year 2004-05 and withholding of 2



increments with non cumulative effect and also for quashing the appellate order contained in letter no. 1465 dated 28.09.10 issued under the signature of the Deputy Secretary Water Resources Deptt. by which the punishment to the petitioner contained in notification no. 1467 dated 09.12.09 has been affirmed.

ii. For issuance of an appropriate writ for commanding and directing respondents to the respondents not to act upon the punishment order till the disposal of the writ petition as the petitioner is working to the post of Executive Engineer on current charge basis since the year 2002 and a large number of similar situated junior to the petitioner has already been promoted to the regular post of Executive Engineer but the petitioner could not be promoted either due to pendency of proceeding against him or due to present punishment order and the petitioner came to know that the Water Resources Deptt. is going to revert him back from the Executive Engineer current charge to the post of Assistant Engineer.

iii. For issuance of an appropriate writ for commanding and directing the respondents to provide the consequential benefit after quashing the punishment order as well as the appellate order.

iv. For issuance of an appropriate writ / writs, order / orders or direction for which the petitioner is found to



be entitled for.”

BRIEF FACTS OF THE CASE

3. It is the case of the petitioner that he was appointed in the Water Resources Department of the Government of Bihar as an Assistant Engineer in the year 1979. While serving as Assistant Engineer he was given current charge of the post of Executive Engineer vide Notification dated 4750 dated 29.06.2002 (Annexure-1 to the Writ Petition) and was posted at Flood Control Division, Naugachhia. During this period, a proceeding under Rule 55A of the Civil Services (Classification, Control and Appeal) Rules, 1930 (in short, ‘the Rules’) was initiated against the petitioner. A Memo of Charge was served upon the petitioner. Annexure-2 to the Writ Application is the letter by which the petitioner was charged for not relieving Sri Harendra Narain, Junior Engineer, Flood Control Division, Naugachhia from 11.02.2004 to 29.06.2004. The petitioner submitted his reply vide letter no. 163 dated 04.03.2005 to the Deputy Secretary to the Government, Water Resources Department, Bihar, Patna. He took a plea that after receipt of the order to relieve Sri Harendra Narain, the Junior Engineer, he immediately issued letter no. 239 dated 27.02.2004 directing the Sub Divisional Officer, Flood Control Sub-division No. 1, Naugachhia Camp Bihpur to take steps to



relieve the Junior Engineer. In turn, the Sub Divisional Officer vide his different letters mentioned in the reply of the petitioner directed the Junior Engineer concerned to hand over his charge to Sri Subhash Chandra Singh, Junior Engineer immediately but Sri Narain, the Junior Engineer, did not take any consequent action to hand over the charge. The petitioner, in his reply, further submitted that vide his office letters dated 28.05.2004 and 15.06.2004 again the Sub Divisional officer was directed to take immediate steps for relieving the concerned Junior Engineer and it was specifically instructed that in case of his failure to hand over the charge, his salary for the month of June, 2004 shall be sopped and was accordingly stopped when the Junior Engineer concerned failed to hand over the charge.

4. It is further stated that Annexure-3 series to the Writ Application would show that several letters were written to Sri Narain, the Junior Engineer asking him to hand over his charge but be delayed handing over the charge to Sri Subhash Chandra Singh, his reliever.

5. By placing Annexure-5 to the Writ Application, the petitioner has pointed out that the letters effecting stoppage of salary when the said Sri Narain, Junior Engineer, failed to hand over the charge were also issued. He was ultimately relieved on 30.06.2004 (Annexure-7).



6. The petitioner was thereafter served with letter no. 716 dated 08.07.2006 (Annexure-8 to the Writ Application) issued under the signature of the Deputy Secretary to the Government asking him to explain as to why four months' time was taken in handing over the charge of Sri Narain, Junior Engineer. This letter also says that the delay in handing over the charge shows that the records were not duly maintained up-to-date and had it been maintained properly in time this period of four months would not have been wasted. In response to this letter, the petitioner vide his letter no. 719 dated 21.07.2006 explained the circumstances under which Sri Narain, Junior Engineer, did not hand over his charge for a period of four months. The petitioner submitted that the delay in handing over the charge cannot be attributed to the updation of the records; it was, according to the petitioner, the said Junior Engineer who had delayed handing over the charge due to his own slackness and, for that reason, his salary for the month of June, 2004 was stopped which was released only after his handing over the charge. The reply of the petitioner is Annexure-9 to the Writ Application.

7. On receipt of Annexure-9, the Deputy Secretary to the Government came out with his letter dated 26.10.2006 in which he took a view that the reasons shown by the petitioner for the delay in handing over the charge are self contradictory. The petitioner once



again responded vide his letter dated 24.12.2006 vide Annexure-11 to the Writ Application but thereafter he was served with an order of punishment vide Notification No. 1467 dated 09.12.2009 which is Annexure-12 to the Writ Application. The petitioner was served with minor punishments of (i) Censure for the period 2004-05 and (ii) Stoppage of two increments with non-cumulative effect. The petitioner is said to have represented against the said order of punishment by preferring an appeal to the Minister, Water Resources Department, Govt. of Bihar, vide Annexure-13 to the Writ Application. The said appeal of the petitioner was, however, rejected and the same was communicated to the petitioner vide letter dated 28.09.2010 which is Annexure-14 to the present Writ Application.

SUBMISSIONS OF THE PETITIONER

8. Sri Siya Rama Sahi, learned Advocate assisted by Sri Shailesh Kumar Sharma, learned Advocate representing the petitioner submits that even though the punishment inflicted upon the petitioner vide Annexure-12 is a minor punishment but a bare perusal of Annexure-12 would show that while imposing a minor punishment upon the petitioner there is no conscious consideration of the reply submitted by the petitioner in response to the charges levelled against him. According to the learned counsel, there was no contradiction in the submissions of the petitioner as he had clearly shown from the



various letters issued to the Sub Divisional Officer and the consequent letters issued to the petitioner, as contained in Annexure-3 series and Annexure-4 respectively, that bona fide efforts were taken on the part of the petitioner towards compliance of the order to relieve the concerned Junior Engineer. The delay in handing over the charge was solely attributable to the concerned Executive Engineer whose salary was even stopped in the month of June, 2004 only for that reason. Non-updation of the records was an imagination on the part of the Deputy Secretary to the Government who, while writing Annexure-8 to the Writ Application, came out with a kind of fresh allegation in the form of an assumption that had the records been updated the four months' period would not have been wasted. Learned counsel submits that there was no basis for the Deputy Secretary to the Government to write such reason in his letter dated 08.07.2006 as contained in Annexure-8 to the Writ Application.

9. Learned counsel has relief upon a judgment of the co-ordinate bench of this Court in the case of **Md. Mahmudul Hasan Vs. The State of Bihar & Ors.**, reported in **(1997) 2 PLJR 953**.

Paragraph 8, on which reliance has been placed, reads as under:-

“8. In so far as the second point is concerned, this Court is of the view that while passing an order under Rule 55-A of the said Rules, it is incumbent upon the authority concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the



explanation given by the employees in an objective basis. This point is, no doubt, concluded by a Division Bench judgment of this Court in the case of **Dr. Rabindra Nath Singh vs. The State of Bihar and others** reported in 1983 P.L.J.R. page 92. In paragraph 10 of the said judgment the learned Judges hold that as no reason has been assigned as to why the show cause reply is un-satisfactory, the same was quashed and the learned Judges held that giving reasons in support of the order which affects a person is also the basic need of the principles of natural justice. In coming to the said conclusion in the case of **Dr. Rabindra Nath Singh** (supra) the learned Judges of the Division Bench have considered various authorities of the Supreme Court. This Court is in respectful agreement with the said judgment in **Dr. Rabindra Nath Singh** (supra) and holds that in the instant case also the impugned order suffers from the same infirmity inasmuch as the impugned order does not at all consider objectively or otherwise the explanation given by the petitioner. Therefore, the impugned order has to be quashed and this Court does quash it as being wholly without jurisdiction.”

Thus, the submission is that in the present case also no reasons has been assigned while issuing Annexure-12 and even the appeal preferred by the petitioner has been rejected vide Annexure-14 to the Writ Application without showing any reasons thereof.

10. In these circumstances he prays for quashing of the order of punishment, as contained in Annexure-12, and the order by which the appeal preferred by the petitioner has been rejected which is Annexure-14 to the Writ Application.

SUBMISSIONS OF THE STATE

11. On the other hand, learned counsel representing the



State submits that the petitioner was served with a charge for showing indiscipline and insubordination inasmuch as despite there being a direction to relieve Sri Narain, the concerned Junior Engineer, the petitioner did not relieve him for a considerable period of four months and thereby he acted in violation of the direction of his senior officer. In its counter affidavit, the State has also come out with an explanation duly reflected in the impugned order (Annexure-12) that the submissions of the petitioner in his show cause were found contradictory to each other. It was found that according to the explanation of the petitioner, the conditions of the materials were not the reasons for the delay in handing over the charge but this was contrary to what he had stated earlier in his first explanation where he had stated that the petitioner wanted to relieve him by handing over the charge properly which had taken some time.

12. Learned counsel submits that the representation of the petitioner by way of reply to the charges was duly considered and a minor punishment was imposed vide Annexure-12 to the Writ Application which is in consonance with the status of guilt. It is further submitted that the review application preferred by the petitioner against imposition of the punishment was also examined but ultimately it was rejected as no cogent ground could be found to interfere with the order of minor punishment. Learned counsel



submits that in the facts of the present case, particularly on perusal of Annexure-12 it cannot be said that no reason at all has been assigned while imposing the minor punishment. He submits that ratio of the judgment in the case of **Md. Mahmudul Hasan** (Supra) will not apply in the facts of this case. The delay in relieving the concerned Junior Engineer has not been well explained by the petitioner and, in fact, his two explanations submitted at two different point of time are self contradictory. He further submits that Annexure-12 duly shows application of conscious mind.

CONSIDERATION

13. I have considered the rival submissions made at the bar and perused the records. To me it appears from a reading of Annexure-3 series to the Writ Application that the petitioner initially tried to justify the delay in relieving the concerned Junior Engineer for the reason that he wanted to ensure handing over of the charge properly. The petitioner took the stand in his reply dated 04.03.2005 that taking into consideration the experience of the past that whenever a Junior Engineer goes without handing over the charge properly a lot of difficulties are faced thereafter which sometimes causes damage to the government articles and causes financial loss as well. In his explanation, he has given some indication that even though he had written letters to the Sub Divisional Officer to relieve Sri Narain, the



Junior Engineer but he wanted to ensure that he should be relieved only after handing over the charge. Having taken this stand in Annexure-3 series, when Annexure-8 was served upon the petitioner he replied vide Annexure-9 dated 21.07.2006 in which he did dispute the fact that the records were not updated and he went on to explain that the present status of the materials in possession of the concerned Junior Engineer seems to be clear from the monthly account and submitted that non-updation of the present status of the materials cannot be taken as a hindrance in handing over the charge. At this stage he has attempted to shift the burden completely upon the concerned Junior Engineer by saying that he had shown some slackness in handing over the charge but there is no plausible explanation for not relieving the concerned Junior Engineer if records were duly up-dated when the instruction came to relieve him.

14. On perusal of these two replies, I am of the considered opinion that the view taken by the disciplinary authority while issuing Notification bearing no. 1467 dated 09.12.2009, as contained in Annexure-12, cannot be faulted with. The show cause submitted by the petitioner has been considered and objectively testing the two replies if the disciplinary authority has found that there are conflicting stands taken by the petitioner, therefore, he has imposed the minor punishments, this Court would not interfere with the same sitting in



it's extra-ordinary writ jurisdiction.

15. It is well settled that in it's writ jurisdiction this Court would not be acting as a Court of Appeal over the order passed by the disciplinary authority. So far as the decision-making-process is concerned which may definitely be looked into while exercising the writ jurisdiction by this Court, this Court is of the view that the principles of natural justice have been followed and the disciplinary authority has passed the impugned order (Annexure-12 to the Writ Application) only upon giving an objective consideration to the two replies submitted on behalf of the petitioner. The ratio of the judgment in the case of **Md. Mahmudul Hasan** (Supra) is that while passing the order under Rule 55A of the Rules, it is incumbent upon the authority concerned to consider the representations made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees on an objective basis. In the said case no reason at all (emphasis supplied) was found in the impugned order. In my view, in the present case, the objective consideration to the replies submitted on behalf of the petitioner has been given and, therefore, I am not inclined to interfere with the order of punishment dated 09.12.2009 as contained in Annexure-12 to the Writ Application. The impugned order is not fit to be interfered with in the facts and circumstances of



this case.

16. The Writ Application is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
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