

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14713 of 2010

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Anil Kumar S/O Sri Birendra Kumar R/O Flat No. 204, Mahendra Apartment,
North Patliputra Colony, P.S.- Patliputra, Distt.- Patna

... .. Petitioner/S

Versus

1. The State Of Bihar Through The Secretary Road Construction Department,
Vishwesharaiya Bhawan, Bihar, Patna
2. The Joint Secretary Road Construction Department, Vishwesharaiya Bhawan,
Bihar, Patna
3. The Engineer-In-Chief Road Construction Department, Vishwesharaiya
Bhawan, Bihar, Patna
4. The Chief Engineer (Mechanical), Mechanical Wing Road Construction
Department, Bihar, Patna
5. The Deputy Secretary (Vigilance) Road Construction Department,
Vishwesharaiya Bhawan, Bihar, Patna
6. The Superintending Engineer (Mechanical) Mechanical Circle, Road
Construction Department, Bihar, Patna
7. The Under Secretary (Vigilance) Road Construction Department,
Vishwesharaiya Bhawan, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Adv.

For the Respondent/s : Mr. Dr. Mankeshwar Tiwari, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-05-2018

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

In this case, the petitioner is challenging three orders,
firstly the order dated 2.6.2009 (Annexure-3) bearing Memo No.
5745 whereby and whereunder the penalty of withholding three
increments with non-cumulative effect has been passed against the
petitioner. Secondly, for quashing the order no. 7022 dated
13.5.2010 passed by the Joint Secretary, Road Construction
Department, Bihar, Patna, whereby, the revision filed by the



petitioner has been rejected and thirdly, the prayer has been made for quashing the order dated 5.7.2010 passed by the Under Secretary, Vigilance Road Construction Department, Government of Bihar.

Instead of dealing with the matter in details of the case, this writ application would be disposed of on account of the fact the orders have not been passed fairly and properly. The petitioner at the relevant time was Executive Engineer (Mechanical), Road Construction Department, Bihar, Patna. The Chief Engineer (Mechanical), Mechanical Wing, Road Construction Department, Bihar, Patna directed the petitioner to shift/transfer the Hotmix Plant from Lauria – Ram Nagar to Phulwarisharif vide letter no. 415 dated 30.4.2008. As per claim of the petitioner, he visited Lauria-Ram Nagar to dismantle the plant and to transfer it to Phulwari Sharif but, was not allowed to dismantle because there was necessity to keep the plant in operation at that time. Again the Chief Engineer (Mechanical) directed the petitioner to transfer the Hotmix Plant from Lauria (Ramnagar) to Phulwarisharif vide letter dated 7.5.2008 and, this time also, the plant was not sent to Puhlwari. When again the notice was issued, the petitioner went at Lauria (Ramnagar), requested for dismantle of the plant and which was allowed and the plants were shifted from Lauria (Ramnagar)



to Phulwarisharif on 7.6.2008 whereafter the explanation was issued which the petitioner has replied which led to passing the order of punishment of stoppage of three increments with non-cumulative effect.

Learned counsel for the petitioner has submitted that it is a minor punishment, full fledged enquiry is not required but, it is the minimum requirement that whatever explanation the petitioner had offered was required to be looked into but, has not been considered and the order has been passed by way of cryptic order and the situation has not improved when the petitioner has filed appeal and revision. All the three orders are completely mechanical and cryptic, does not disclose that the explanation, which the petitioner had submitted, was taken into consideration.

Learned counsel for the State submits that as it was a minor punishment, as per proper procedure, the explanation has been called for and the order of punishment has been passed. There is no mandate of law to hold a full fledged proceeding and pass a well reasoned order.

Having considered the rival contentions of the parties, though there is a minor penalty proceeding, full fledged enquiry is not required but, at least, it is the requirement that when an explanation is submitted by the delinquent, that should be dealt



with properly so that the higher court should know mind of judgment maker as to what was going on as the reason is the living link between the judgment maker and the judgment, bereft of reason, the order cannot withstand the test of reasonableness. This defect is present in all the aforesaid three orders which are completely cryptic without any consideration.

Accordingly, all the aforesaid orders i.e. the order dated 2.6.2009 contained in Memo No. 5745, the order dated 13.5.2010 contained in letter no. 7022 and the order dated 5.7.2010 contained in letter no. 9789 are quashed and the matter is remanded back. The authorities if so like they may take a proper steps and pass orders in accordance with law.

This writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.06.2018
Transmission Date	NA

