

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15212 of 2010

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Sanjivan Choudhary S/O Late Mulchand Choudhary R/O Vill.- Jat Dumri,
P.S.- Punpun, Distt.- Patna, At Present Working As Technical Secretary (S.E.),
Minor Irrigation Department, Muzaffarpur, Kachchi Sarai- 842002

... .. Petitioner/S

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Irrigation, Government Of Bihar, Patna
2. Mr. Ajay Nayak S/O Name Not Known The Secretary, Irrigation Department, Govt. Of Bihar, Patna
3. Mr. Devi Rajak S/O Name Not Known The Engineer-In-Chief, Irrigation Department, Govt. Of Bihar, Patna
4. Mr. Om Prakash Ambarkar S/O Shri Radha Krishna Ram Joint Secretary, Irrigation Department, Government Of Bihar, Patna, At Present Chief Engineer, Dehri-On-Sone, Irrigation Department, Govt. Of Bihar, Patna
5. Mr. Shashi Bhushan Tiwary, Deputy Secretary Vigilance, Irrigation Department, Govt. Of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar, Adv.
For the Respondent/s : Mr. Ram Shankar Prasad, AC to GP-14

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 16-05-2018

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

In this case, the petitioner is challenging the notification vide Memo No. 175 dated 28.1.2010 issued by the Deputy Secretary, Water Resources Department, thereby inflicting punishment of censure for the year 2008-09, stoppage of one increment with non-cumulative effect and nothing would be paid to the petitioner in addition to subsistence allowance but, the same would be computed for payment of retirement benefit and, against that, the petitioner has filed appeal cum review, that too has been



rejected and the contents of punishment has been reiterated in the order of review/appeal dated 31.8.2010 (Annexure-B to the counter affidavit) which has been challenged through I.A. No. 4477 of 2017 giving subsequent facts which have taken place during pendency of the writ application.

The allegation has been made against the petitioner that while he was holding the post of Technical Secretary, Superintending Engineer, Minor Irrigation Department, at the time of proceeding, the petitioner was holding the post of Superintending Engineer, Irrigation Circle, Kharagpur.

The matter relates to repairing of road from Kharagpur Bazar to Kharagpur Jheel. As per advertisement, the value of the work was Rs. 69,05,958/- and, in that, three Contractors have taken part in the bid and the application of M/s Sadanand Singh Construction Pvt. Ltd. was rejected as it had not submitted the proper records along with the sealed tender. It was found that M/s Sadanand Singh Construction Pvt. Ltd. had wrongly been rejected in terms of Bihar Enlistment and Contractor Rules was in force and, as per rule, certain pre-qualification was fixed by the Department vide letter no. 90 dated 16.1.2006 with respect to the work less than Rs. 1 crore. As per rule, all the three Contractors were qualified for financial bid of the said tender but, applying the



Bihar Enlistment Contractor Rule, 2007, which has been made effective vide notification no. 3167 dated 12.11.2008, the tender of M/s Sadanand Singh Construction Pvt. Ltd. was rejected which led to initiation of departmental proceeding. The charge-sheet in Prapatra "Ka" dated 14.5.2009 was served upon the petitioner and the petitioner was called for show-cause cum explanation which the petitioner had filed vide explanation dated 11.6.2009 wherein he claimed that at the relevant time, the Contractor Enlistment Rule, 2007 was in force not the 1982 Rule was in force. He has given his own explanation and counsel for the petitioner has placed reliance on the terms of the advertisement wherein it has been stipulated that the prevalent rule will be applicable for short-listing the Contractor. As M/s Sadanand Singh Construction Pvt. Ltd. was not fulfilling all the conditions of the advertisement and, as such, his application was rejected but, it appears that after the show-cause, the Disciplinary Authority has passed the order inflicting punishment such as censure for the period 2008-09, stoppage of increment for one year non-cumulative and he will not be paid additionally to the subsistence allowance which has already been paid to him.

Learned counsel for the petitioner submits that he had made comparative comparison and found that M/s Prabha Shankar



Pandey, Bhagalpur was better Contractor than M/s Sadanand Construction Pvt. Ltd.

This Court is not deciding that who was the fit Contractor for execution of the work but, only the Court has to decide as to whether the order which has been passed followed the proper procedure in passing the impugned order. From the impugned order, it appears that the Deputy Secretary, has not considered the explanation at all which has been filed by the petitioner and in ipsi dixit manner by a cryptic order the aforesaid punishment has been inflicted upon the petitioner.

Learned counsel for the petitioner submits that it is the bounden duty of the Disciplinary Authority even for the minor punishment proceeding, on receipt of the explanation, he should have considered the same and could have passed the order but, this process was not followed by the Disciplinary Authority and straightway, in a perfunctory manner, without considering the explanation, has passed the order and the same mistake was committed again by the same authority while hearing the matter in appeal/review, the situation has not improved. Both the orders are illegal on account of the fact that they have not passed a reasoned order.



Learned counsel for the State has tried to justify the order passed by the Disciplinary Authority but, the order itself shows that in a mechanical manner, without application of mind, cryptic order has been passed against the petitioner without there being any consideration of the explanation, he has filed before him.

In that view of the matter, the order contained in Memo No. 175 dated 28.1.2010 as well as the order dated 31.8.2010 are quashed and the matter is remanded back, if so like, they may proceed in accordance with law.

As has been informed the petitioner has already superannuated, the Department, if so advised, may take action under Section 43(b) of the Bihar Pension Rules by applying proper procedure.

In the result, 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	05.06.2018
Transmission Date	NA

