

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14349 of 2010

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KALIMULLAH S/O SHEIKH NASIRRUDIN R/O VILL
BEDWALIA(TOLA), P.O.GAZIAPUR, VIA-JIRADEI, DISTT-SIWAN

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR , THROUGH THE PRINCIPAL SECRETARY-
CUM-COMMISSIONER, WATER RESOURCES DEPARTMENT
GOVERNMENT OF BIHAR, NEW SECRETARIAT, PATNA
2. THE PRINCIPAL SECRETARY, WATER RESOURCES DEPARTMENT
GOVERNMENT OF BIHAR, SINCHAI BHAWAN, NEW SECRETARIAT,
PATNA
3. ENGINEER-IN-CHIEF, WATER RESOURCES DEPARTMENT
GOVERNMENT OF BIHAR, SINCHAI BHAWAN, NEW SECRETARIAT,
PATNA
4. THE UNDER SECRETARY, WATER RESOURCES DEPARTMENT
GOVERNMENT OF BIHAR, SINCHAI BHAWAN, NEW SECRETARIAT,
PATNA
5. CHIEF ENGINEER, WATER RESOURCES DEPARTMENT
BHAGALPUR
6. SUPERINTENDING ENGINEER, IRRIGATION CIRCLE NO.2 JAMUI
7. EXECUTIVE ENGINEER, IRRIGATION DIVISION NO.2 JAMUI
8. SRI SANTOSH SHARAN AT PRESENT EXECUTIVE ENGINEER,
IRRIGATION DIVISION NO.2, JAMUI

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akashdeep
For the Respondent/s : Mr. (Sc7)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 26-06-2018

The present writ petition has been filed for quashing the entire departmental proceeding including memo of charge dated 20.10.2010 and order of punishment dated 25.06.2012. It has been further prayed for quashing the appellate order dated 18.09.2013.

The brief facts of the case are that a departmental



proceeding was initiated against the petitioner herein and memo of charges was served through memo dated 20.10.2010 on the allegation of gross misconduct and indiscipline in view of the fact that though the petitioner was directed to take charge from one Shree Uday Shankar Thakur, the petitioner had engaged in frivolous communications and failed to take the charge. The Inquiry Officer by his inquiry report dated 09.02.2012 had found the allegation to have not been proved. Thereafter, the Disciplinary Authority had issued a second show cause notice dated 09.04.2012, differing from the opinion of the Inquiry Officer, to which reply was submitted by the petitioner herein. The Disciplinary Authority had then by the impugned order dated 25.06.2012 has inflicted the punishment of reprimand and stoppage of one increment with non cumulative effect. The petitioner had filed an appeal against the said order dated 10.07.2012 but the same has also been dismissed by an order dated 18.09.2013.

The learned counsel for the petitioner has raised a short point for consideration to the effect that the second show cause notice issued by the Disciplinary Authority dated 09.04.2012 does not disclose any reasons for differing from the opinion of the Inquiry Officer, hence, the same has caused great prejudice



to the petitioner inasmuch as the petitioner has been denied an opportunity to persuade the disciplinary authority to accept the favourable conclusion arrived at by the Inquiry Officer.

Per contra, the learned counsel for the Respondents has submitted that there is no precedural error in conduct of the departmental proceeding and a writ court cannot re-appreciate the evidence, by assuming the role of an appellate authority.

I have heard the learned counsel for the parties and perused the materials on record.

Admittedly, the Disciplinary Authority while issuing the second show cause notice dated 09.04.2012 has failed to record its tentative reasons for disagreeing with the findings of the Inquiry Officer so as to provide an opportunity to the delinquent i.e. the petitioner herein to represent against the same, thus, the petitioner has been denied an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer resulting in the entire disciplinary proceedings, right from the stage of issuance of the second show cause notice to the passing of the punishment order dated 25.06.2012 and the Appellate Order dated 18.09.2013 being rendered illegal and vitiated. Reference, in this regard, be had to the settled law laid down by the Hon'ble Apex Court in a judgment reported in **(1998) 7 SCC 84 (Punjab National Bank Vs. Kunj Bihari Mishra)** and



the one reported in *(2013) 7 SCC 251 (S.P. Malhotra vs. Punjab National Bank and Others)*.

For the reasons mentioned hereinabove, the writ petition is allowed and the second show cause dated 09.04.2012, order of punishment dated 25.06.2012 and the appellate order dated 18.09.2013 are quashed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.07.2018
Transmission Date	NA

