

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13764 of 2016

Prabhat Kumar S/o Sri Shyam Kishore Prasad Sinha, resident of 301, TPV Ashiyana, P.S.- Shastrinagar, Patna-25, presently Superintending Engineer, Building Construction Department, Building Zone, Motihari, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Joint Secretary-cum-Chief Vigilance Officer, Building Construction Department, Government of Bihar, Patna.
4. The Secretary, Water Resources Department-cum-Additional Department Inquiry Commissioner, Government of Bihar, Patna.
5. The Principal Secretary Home (Police), Government of Bihar, Patna.
6. The ADG-cum-Chairman-cum-MD, Bihar Police Building Construction Corporation, Government of Bihar, Patna.
7. The Under Secretary, Establishment-cum-Presenting Officer, Building Construction Department, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Krishna Chandra, Advocate Mr. Avinash Kumar, Advocate
For the State	:	Mr. Amit Prakash- GA13 Mr. Ravi Bhardwaj, AC to GA 13
For the Res. No.6	:	Mr. Prasson Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 28-11-2018

Heard learned counsel appearing for respective parties.



2. In this case, the petitioner is challenging the order vide memo no. 8974 dated 27.08.2015, by which the punishment of stoppage of one increment with non-cumulative effect has been inflicted upon the petitioner.

3. Basically, the petitioner was appointed as Engineer in the Road Construction Department, but was sent on deputation in the Bihar Police Building Construction Corporation vide Notification No. 5644 (S) dated 19.04.2010. While petitioner was on deputation, the Road Construction Department was trifurcated and the petitioner was made an employee of the Building Construction Department and he was transferred to Building Circle, Motihari and was given additional charge of Building Circle, Darbhanga. As the petitioner was in the Bihar Police Building Construction Corporation Department, he was required to relieve by the Corporation and only then he could have joined the new place of posting.

4. Today, the Corporation has filed an affidavit, wherein the statement has been made by the Corporation that the Additional Director General – cum – Chief Managing Director of the Corporation by letter no. HQ 8029 dated 30.11.2013 requested the Principal Secretary, Home (Police)



Department, Government of Bihar, not to relieve the petitioner from service of the Corporation till the Corporation gets his successor, as there will be an adverse impact on ongoing work of the Corporation. The Principal Secretary, Home (Police) Department, Government of Bihar, by letter no. 9572 dated 30.12.2013, requested Secretary of the Road Construction Department to allow the petitioner to continue in the Corporation till his substitute is provided by the State Government to the Corporation and a copy of the said letter was also forwarded to the Corporation for needful.

5. Again Additional Director General-cum-Chairman – cum – Managing Director of Corporation by Letter No. 386 dated 23.01.2014, requested the Secretary, Building Construction Department, Bihar, Patna, to allow the petitioner to continue in Corporation till his successor joins the Corporation and the same was communicated to the petitioner through Letter No. 1234 dated 19.03.2014. Ultimately, the petitioner was relieved from the service by the Corporation vide letter no. HQ3683 dated 22.08.2014, issued under the signature of Secretary of the Corporation. As there was a delay in joining the new place of posting, a major penalty proceeding was initiated, which culminated into inflictment of the punishment, which is



under challenge before this Court.

6. Two points have been raised by the petitioner; first, the attending facts and circumstances itself discloses that the petitioner had not committed any misconduct as he could not have joined new place of posting without being relieved by the Corporation and the counter affidavit itself suggests that repeatedly letters were addressed to the Secretary of the Building Construction Department to allow him to continue on the post till the next successor joins his place. Under such compelling circumstances, the petitioner failed to join the new place of posting, would not constitute a misconduct. He further submits that proceeding was initiated as a major penalty proceeding under Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and Inquiry Officer has found favour with the petitioner as he has recorded that no misconduct has been committed by the petitioner and straightway the petitioner has been inflicted the punishment of stoppage of one increment with non-cumulative effect.

7. So, two flaws are there, one is that the act which is alleged to have been committed does not constitute a misconduct and second the procedural irregularity in conducting the departmental proceeding.



8. Learned counsel for the Corporation also supported the case of the petitioner, which is apparently clear from the counter affidavit filed by the Corporation.

9. Learned counsel for the State has vehemently opposed the arguments of the petitioner and has submitted that right action has been taken against the petitioner as he has failed to join the new place of posting.

10. Having regard to the facts and circumstances case, the petitioner could not join the new place of posting as was not relieved by the authority where he was deputed to work as well as when the departmental proceeding has been initiated and the inquiry officer has submitted his report in favour of the petitioner, the prudence lies with the disciplinary authority to record his finding of disagreement and furnish the same to the petitioner and after considering the explanation he could have passed the order against the petitioner, which has not been done in the present case. Hence, this Court is of the view that neither the misconduct is constituted against the petitioner nor an inquiry has been done against the petitioner in accordance with law.

11. In such view of the matter, this writ petition is



allowed. Accordingly, the order vide memo no. 8974 dated 27.08.2015 is quashed. The petitioner will be entitled to all consequential benefits.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.12.2018
Transmission Date	

