

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7822 of 2017

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Rajendra Manjhi Son of Late Dhanna Manjhi, Resident of Village- Post Keraria,
P.S. Gopalganj, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary cum Commissioner, Rural Works Department Bihar, Patna.
3. The Engineer-in- Chief Rural Works Department Bihar, Patna.
4. The Chief Engineer, Rural Special Zone, PWD, Bihar, Patna.
5. The Officer-on- Special Duty, Rural Works Department, Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Work Division, Sitamarhi.
null null
7. The Deputy Secretary, Rural Works Department, Bihar, Patna.
8. The Chief Engineer III, Rural Works Department, Government of Bihar, Patna.
9. The Executive Engineer, Rural Works Department, Sheohar.
10. The Executive Engineer, Rural Works Department, Work Division, Siwan - II,
District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Kumar Jain
For the Respondent/s : Mr. Ajay-GA5
Mr. Pratik Kumar Sinha, AC to GA5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-09-2018

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

In the present writ petition, the petitioner is challenging the
initiation of departmental proceeding as has been served the
chargesheet in Prapatra-K dated 25.10.2016 (Annexure 10), in
which main allegation has been made that the petitioner has
remained absent for a quite long period i.e. from 2001 to 2011
without any information to the competent authority and he has



been directed to face the proceeding under Section 17 of the Bihar CCA Rules, 2005.

Learned counsel for the petitioner submits that a proceeding has been initiated after the lapse of long period, itself is a ground for quashing the initiation of departmental proceeding as there is no explanation of delay in initiation of departmental proceeding as chargesheet was never served upon him except by the impugned chargesheet.

The short facts of this case are that the petitioner was discharging the duty as Junior Engineer, Work Division, Siwan, he was transferred to Sheohar. He had gone to Sheohar to join the new place of posting but the Executive Engineer refused to allow him to join and asked him, first to hand over the charge only then he will be allowed to join the new place of posting. He remained absent without any notice to the concerned authority up to 2011. It appears from the record that from time to time the respondent issued letters and asked him to hand over the charge and join new place of posting but he did not turn up and hand over the same.

It appears that ultimately and finally vide memo No. 1176 dated 13.07.2012 the petition was directed to give charge to one Basuki Nath Chaubey, Junior Engineer within three days and submit a report, whereafter, he handed over the charge to Basuki



Nath Chaubey and filed proper application on 17.07.2012 in the name of Assistant Engineer, Rural Works Division, Sonbarsa, Sitamarhi confirming the same.

It appears that the petitioner had approached this Court in C.W.J.C. No. 9077 of 2011 with a prayer that the respondents be directed for a posting commensurate with his status in service as he has already served the department for 24 years. The Court directed to file representation before the Engineer-in-Chief, Water Resources Department, Bihar, Patna, who will dispose of the representation, which is apparently clear from Annexure-4 of the writ petition. It appears that representation was filed by petitioner on 31.01.2014 which was placed before Special Secretary, Government of Bihar asked him to report on 02.07.2014 at 03:00PM in his Chamber, and place his case so that proper decision would be taken. It appears that he filed representation on 18.07.2014 mentioning there in that he had filed representation on the basis of direction given by this court and oral instruction was given to join Sheohar Division. He reported to the office at Sheohar Division on 15.07.2014, accordingly he was informed that his joining will be accepted after six months. It further appears that the letter dated 07.10.2014 issued by Chief Engineer – cum - Additional Commissioner - cum - Special Secretary



reflects that he had filed his application for joining on 31.01.2014, accordingly he was directed, till further order to work at Rural Works Division-2, further has been mentioned that proper decision with respect his absence from 2001 to 2011 will be taken later on. Ultimately departmental proceeding has been initiated vide Memo No. 250 dated 23.02.2017 along with Prapatra-K to him.

Learned counsel for the petitioner submits that as there is long delay in initiation of departmental enquiry as it was known to them of his absence for the period from 2001 to 2011. They should have taken action against him in time this on account of this failure the Court should interfere with the initiation of departmental proceeding. In support his submission he has placed reliance on the following judgments; (i) State of Madhya Pradesh Vs. Bani Singh & Another, reported in 1990 (Supp) SCC 738, (ii) P.V. Mahadevan Vs. Mohd. T. N. Housing Board, reported in (2005) 6 SCC 637 (iii) Dilip Kumar Dey Vs. Vs. Punjab National Bank & Ors., reported in 1999 (2) PLJR 145 and (iv) C.W.J.C. No. 7556 of 2006 (Kusheshwar Das Vs. The State of Bihar).

Learned counsel for the State has submitted that there is no delay at all, as petitioner has remained absent from 2001 to 2011, he was allowed to join on the post in the year 2014. The letter no.



12039 dated 09.10.2014 itself shows that proper decision with respect to his absence for the period of 2001 to 2011 would be taken later on, further submitted when the petitioner has remained absent, time to time by different manner, he was asked to join for that notices were issued to him inasmuch as the notice was also published in the Newspaper, even then the petitioner without any information, remained absent for such a long period.

Let us examine the judgment cited by the petitioner on the issue of delay and laches in initiation of departmental proceeding and its effect.

In the case of Bani Singh (supra) certain incidents took place in 1975-76, proceeding was initiated in December, 1987, which was challenged before Central Administrative Tribunal and the same was quashed. The matter came for consideration before Hon'ble Supreme Court, the Court has taken note that Central Administrative Tribunal rightly quashed the proceedings on the ground of delay and laches and the plea for continuance of enquiry was rejected. The Hon'ble Supreme Court has taken view that the irregularities committed by petitioner was the subject matter of the enquiry is related to the years 1975-77, was known to the department and it was not the case that they were not aware of the said irregularities and came to know it only in 1987.



According to the State of Madhya Pradesh, during April 1967, there was doubt about the involvement of the petitioner in the said irregularities and the Court held that it is unreasonable to think that they would take more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There was no satisfactory explanation for the inordinate delay in issuing the charge memo and the Court has held that it would be unfair to permit the departmental enquiry to be proceeded with.

This Court in the case of Dilip Kumar Dey (supra) has considered identical issue placed reliance on the case of Bani Singh (supra). In that case a criminal proceeding was initiated against the petitioner, in that criminal case he was discharged by the Magistrate Court the fact remained un-alter. The said order of Magistrate was affirmed by the Additional Sessions Judge, after long lapse of time without proper explanation of delay departmental proceeding was initiated vide order dated 29.5.1992 for the charge of 1974-75, this Court has recorded the fact that petitioner was put to criminal proceeding in which he was acquitted and even thereafter after long delay a proceeding was initiated, which was not approved by this Court and quashed the same.

The Hon'ble Supreme Court has considered the same



issue in the case of P.V. Mahadevan (supra) as proceeding was initiated after lapse of 10 years. In this case also proceeding was initiated and after delay of 10 years without any proper explanation the Court has interfered and quashed the charge memo. It will be relevant to quote paragraph no.11 of the aforesaid judgment:

“11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”



Let us consider the fact of this case in the context of the judgment on delay as stated hereinabove. In this case the petitioner has remained absent from 2001 to 2011, proceeding has been initiated by issuance of charge memo vide order no.250 dated 23.2.2017. He had handed over the charge to one Basuki Nath Chaubey on 17.7.2012, inasmuch as, petitioner had approached this Court in C.W.J.C. No.9077 of 2011 having taken the plea that he had served the department for 24 years, he should be given the posting according to his seniority. He joined the place of posting in 2014 and his application dated 31.1.2014 was taken into consideration, was informed, decision with respect to his absence from 2001 to 2011 will be taken later on whereafter he was served the charge sheet vide memo no.250 dated 23.2.2017. So he has remained absent for about 10 years, finally he has handed over the charge in 2012. So the delay would not start running from 2001 and onward but will be from 2011 when he reported first after his absence. In this view of the matter the fact of the present case is quite different to other cases.

The issue of delay has to be examined in relation with upto last date of his absence, so the issue of delay has to be examined in context of his absence i.e. up to 2011 that too for 10 years and as such last date of his absence will be starting point for counting the



period of delay in initiation of enquiry.

This Court is of the view that it will not be proper to interfere with the departmental proceeding at the threshold.

Accordingly this Court does not find any merit in this writ petition. Accordingly the same is dismissed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.9.2018
Transmission Date	NA

