

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12484 of 2010

Ashok Kumar Verma, son of late (Dr.) Satya Narain Prasad Verma, resident of
Shastrinagar, P.S.- Chatauni, District- East Champaran

... .. Petitioner

Versus

1. The State of Bihar
2. The Commissioner-Cum-Secretary to Govt. of Bihar
3. The Commissioner, Departmental Enquiry Department of Personal and Administrative Reform, Bihar, Patna
4. The Joint Secretary to the Government of Bihar, Road Construction Department, Bihar, Patna
5. The Dy. Secretary Cum Chief Vigilance Officer, Road Construction Department, Govt. of Bihar, Patna
6. The Special Officer-Cum-Dy. Secretary, Rural Construction Department, Bihar, Patna
7. The Accountant General, Bihar, Birchand Patel Marg, Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Keshav Shrivastava, Senior Advocate Mr. L.P.K. Rajgrihar, Advocate Mr. Sarbottam Kumar Sarkar, Advocate
For the State	:	Mr. Anwar Karim, A.C. to G.P.-10
For the Accountant General	:	Mr. Anjani Kumar Sharan, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 07-05-2018

Heard learned counsel appearing for the respective parties.

2. In this case, the petitioner is challenging the order containing memo no.8603 (S) dated 08.06.2010, passed by the Joint Secretary, Road Construction Department, Government of Bihar, Patna, by which the pension of the petitioner has been reduced by 5% while exercising the power under Section 43(b) of the Bihar Pension rules, on the ground that charge no.3 has



been found to be proved.

3. The petitioner was in Engineering Service, at the relevant time holding the post of Technical Assistant. There was a repair work of Jagdishpur Sanhaula road during the year 2000-2001 and having found that the repairing has not been done as per its specifications. The total length of the road was 5.64 km., the allotment for repairing was made at Rs.89.38 lakh. Out of that Rs.33.94 km. was to be constructed a new road and for 1 km. 2.63 lakh was recommended, for this Sanhaula road Rs.14.85 lakhs was allotted. The Executive Engineer, Road Construction Department, Eastern Circle, vide letter no.1556 dated 25.10.2010 approved the sanction of the road in two parts; first for Rs.5,45,700/- and another for Rs.12,32,600/- was allotted but the final approval of estimate was Rs.17,58,300/-. For that certain guidelines were provided in what manner the work has to be carried out. During the period from 27.06.2000 to 04.01.2002 the petitioner was Technical Assistant of Superintending Engineer and he was not in-charge with respect to the work carried out of that period. The petitioner was also in dual charge for the period from 31.01.2001 to 06.07.2001 of Executive Engineer, meaning thereby he was Technical Assistant of Superintending Engineer as well as was holding the



charge of the Executive Engineer. All the estimated tender and repair work was done during the period of his predecessor. A Flying Squad had made an inspection, found that the repair work was not done as per the specifications, after report of the Flying Squad on 14.11.2002, the petitioner was issued show-cause of 10 charges and out of 10 charges, after receipt of the reply of the petitioner 5 charges were dropped. Whereafter, a show-cause as per Rule-55A of the C.C.A. Rules, 1939 was issued to the petitioner on 11.11.2003, which was replied by the petitioner on 12.12.2003 and explained that he was not involved in any way in the work carried out. The petitioner has superannuated from the service on 31.12.2003, he was granted full pension and other benefits on 30.09.2004 but later on, inquiry proceeding was initiated on 05.04.2007 as provided under Section 43(b) of the Bihar Pension Rules. In fact, the proceeding was started with respect to 4 charges and the Inquiry Officer has submitted the Inquiry report, wherein he has found that charge nos. 1, 2 and 4 were not proved but the charge no.3 was found proved and whereafter, the petitioner was given the second show-cause which was replied by him and ultimately, the impugned order dated 08.06.2008 has been passed, thereby reduced the pension of the petitioner by 5%.



4. It has been submitted by the learned counsel for the petitioner that all the transactions have been taken place during the period of his predecessor, when everything was over, even the bill was passed, the petitioner had joined the post of Executive Engineer at later stage and as such, he had no role in any manner with respect to the aforesaid work. He further submits that the charge which has been found to be proved is not the subject matter of the departmental proceeding as charge no.3 specifically states about the work done during his period, whereas the finding has been recorded that during that period he was not in any way involved but as he was a Technical Assistant of Superintending Engineer, he must have a knowledge about the approval of the Superintending Engineer. At the same time, in the show-cause the petitioner has specifically taken stand that the Department's letter no.904(S) dated 14.02.2000 is applicable to the original work not to the work related to the repair and as such, the said letter does not apply to the present matter though he has taken plea that he was not in any way involved, as all the transactions relating to the work which was completed well before 31.01.2001.

5. Learned counsel for the State has tried to support the action of the department and submitted that no illegality has



been committed by the department in reducing the pension of the petitioner by 5%.

6. The Inquiry Officer has submitted the Inquiry report, wherein he has found that charge nos. 1, 2 and 4 having been not proved, whereas charge no.3 has been found to be proved and he has given the reason from paragraph nos. 39 to 41, wherein he has accepted that the petitioner has no role in the estimate nor having done any work for grant of approval of the work by the department but has recorded that he must have a knowledge about the grant of the approval as he was the Technical Assistant of the Superintending Engineer. Further, he has recorded that voucher and measurement book were already passed and as such, it is not clear what role has been played by the petitioner in that matter. He has further recorded that there was violation of instruction mentioned in the letter, but the work was already completed, vouchers and bill were passed and there is no material to show that in what manner he could have made any influence in the said transaction. With regard to another charge of granting of Rs.4.5 lakh for execution of work by the department, as he was the Technical Assistant of the Superintending Engineer, reflects his role in the said approval and found that he was involved with regard to grant of approval



of work worth Rs.4.5 lakhs.

7. On perusal of the charge-sheet, it appears that the charges levelled against the petitioner that, letter no.904(s) dated 14.02.2000, stipulates that no work will be to be carried by the Department and in special circumstance, if the work has to be done but only after the approval of the Chief Engineer, but the petitioner has carried out the work after taking approval from the Superintending Engineer and for that he is liable for the dereliction of duty. Nowhere, in the charge no.3 any such charge has been framed against the petitioner with respect to having played any role in granting approval of the second phase of work worth Rs.4.5 lakh but the finding has been recorded against the petitioner with respect to charge which is not subject matter of departmental proceeding.

8. The Disciplinary Authority has not taken care to examine that the charges which have been found proved was not the subject matter of charge-sheet, has recorded that his second show-cause was not found satisfactory and the explanation having been not accepted. On perusal of the record, it appears that all the actions have been taken with regard to grant of approval, when the vouchers and bills were already passed, it does not stand to the reason in what manner he could



have contributed in decision making process of granting approval by the Superintending Engineer. A person can be punished with respect to the charges which are subject matter of departmental proceeding but he cannot be punished for the charges, which are not mentioned in the charge-sheet.

9. In such view of the matter, the order containing memo no.8603(S) dated 08.06.2010 passed by the Joint Secretary to the Government, Road Construction Department, Government of Bihar, Patna, is set aside. This Court directs that the petitioner will be entitled to 100% pension and whatever deduction has been made that should be paid to him within a period of four months from the date of receipt/production of a copy of this order.

10. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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