

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3342 of 2015

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Gauri Shanker Pandey S/o Late Suryadeo Pandey Resident of Village Bhawanipur,
P.S. Sangrampur, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt of Bihar, Patna.
2. The Secretary-cum-Commissioner, Department of Water Resources, Sinchai Bhawan, Patna.
3. The Deputy Secretary, Water Resources Department, Govt of Bihar.
4. The Engineer-in-Chief, Water Resources Department, Sinchai Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Pramod Kumar Pandey, Advocate

For the Respondent/s : Mr Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 23-07-2018

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

2 The petitioner has filed the writ petition challenging the imposition of punishment under order dated 16.06.2005 under Memo No 646 issued under the signature of Engineer-in-Chief, Water Resources Department, Government of Bihar wherein he has been reverted to the minimum pay scale as also for quashing of the order of the Appellate Authority dated 08.07.2014 issued under Memo No 886 whereby petitioner's appeal has been rejected.

3 In respect of the same allegations, the petitioner along with another Junior Engineer, namely, Choudhary Vijay Kumar



Sharma was proceeded for irregularities in the execution of canal works. The charges were identical in respect of the Junior Engineers and the petitioner. Both were given a charge memo and after due enquiry, the punishment was awarded to the petitioner as well as Choudhary Vijay Kumar Sharma.

4 Both filed writ petitions wherein this Court, under order dated 31.07.2012, set aside the punishment and allowed the writ petitions filed by the petitioners. The State went in appeal in both the said cases. The order is dated 28.06.2013 passed in LPA No 398 of 2013 in the petitioner's case. This time also, the LPA has been decided along with that of Choudhary Vijay Kumar Sharma in whose case, LPA No 374 of 2013 had been preferred by the State of Bihar. Having considered the various issues, the Division Bench of this Court had not found any reason to interfere with the order passed in the enquiry up to the order of the Disciplinary Authority imposing punishment on the petitioner. The Division Bench has taken into consideration the fact that even if the appellate order is by way of affirmation, the same should contain some reason so as to enable the petitioner to appreciate the circumstances in which his appeal has been rejected.

5 Now, a reasoned order has been passed by the Appellate Authority in the case of petitioner also as was done in the



case of Choudhary Vijay Kumar Sharma. The appellate order in the petitioner's case is dated 08.07.2014 bearing Memo No 76 issued by the Additional Secretary to the Government of Bihar in the Water Resources Department. The Appellate Authority, this time, has given a detailed and considered order taking into consideration the quality of work performed by the petitioner and finding the same to be of a very inferior quality, the appeal has been rejected.

6 At this juncture, learned counsel for the State submits that in the case of Choudhary Vijay Kumar Sharma, the appellate order was also challenged by filing *CWJC No 3356 of 2015*. The same has been dismissed under order dated 23.06.2015 taking note of the fact that now the appellate order has been issued assigning reasons and rational for the rejection.

7 State has also filed counter affidavit wherein it has stated that after the enquiry, the gravity of the charge was found to be sufficient for dismissing the petitioner but at the departmental level, after some consideration, it was decided to tone down the punishment within the Department and, therefore, the punishment awarded to the petitioner was reduced by taking a lenient view of the matter. He submits that the loss occasioned by the petitioner due to the manner in which the works were discharged by the petitioner was having very huge financial implication and, as such, quantum of punishment is



also in accordance with, if not less, than the gravity of the charge. The learned counsel for the State has also sought to rely upon the decision in *CWJC No 3356 of 2015* passed on 23.06.2015 wherein coordinate Bench of this Court dealing with the identical case of the petitioner therein has been pleased to consider as follows:

“Counsel for the petitioner has many a things to say with regard to the manner in which the enquiry was held and how he was prejudiced by non-furnishing of certain documents, evidence etc etc.

With due respect such submissions cannot now be entertained by the Court at this belated hour. The earlier round of litigation culminated into a specific order with regard to the legality of the appellate order. The Division Bench also confined itself to the said issue alone and did not say anything with regard to the correctness of the order of punishment and the findings which did emerge in the order of punishment passed by the disciplinary authority. The Court, therefore, would not encourage the counsel for the petitioner to reopen the ambit of judicial review as if it is a de novo exercise of judicial scrutiny against the disciplinary authorities’ decision.

The Court has gone through the appellate order, contained in Annexure-14, dated 08.07.2014. The objections raised by the petitioner in memo of appeal has been crystallized which will be evident from page 2 of the impugned order and the reasoning and rational for rejecting the same follows thereafter. A reading thereof does not lead this Court to a conclusion that the same seems to be irrational or perverse on the face of the evidence which has been dealt with or the reason for the conclusion so reached.



If the earlier appellate order was set aside on the ground that the same was cryptic, showing non-application of mind, at least this order does not suffer the said vice. The findings are against the petitioner. The appellate authority has refused to reduce the punishment or exonerate the petitioner for the reasons so assigned now, which learned counsel for the State has duly supported by way of a counter affidavit, explaining the background leading to the passing of the impugned order. The impugned orders do not require any interference on that count. Matter cannot be reopened on any other ground in view of the two decisions of the Learned Single Judge and the Division Bench.

Writ application is required to be dismissed. It is dismissed.”

8 In view of the aforesaid submissions, this Court is also of the opinion that the case of the petitioner is fully covered by the decision in the case of Choudhary Vijay Kmar Sharma. Since, on this occasion, the Appellate Authority has disposed of the petitioner’s case assigning reasons, this Court is not inclined to interfere with the order impugned in the writ petition.

9 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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