

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7899 of 2017

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Ramanand Yadav S/o Sri Ramsagar Yadav a resident of Mohalla-
VishnupurParant , P.S. Begusarai town, District Begusaria

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department Bihar
2. Secretary, Rural Works Department Bihar, 5th Floor Vishveshwarya Bhavan,
Bailey Road, Patna.
3. Engineer-in-Chief, Rural Works Department Bihar, 5th Floor Vishveshwarya
Bhavan, Bailey Road, Patna.
4. The Joint Secretary, Rural Works Department Bihar, 5th Floor Vishveshwarya
Bhavan, Bailey Road, Patna.
5. The Officer on Special Duty, Rural Works Department Bihar, 5th Floor
Vishveshwarya Bhavan, Bailey Road, Patna.
6. Section Officer, Rural Works Department Bihar, 6th Floor Vishveshwarya
Bhavan, Bailey Road, Patna.
7. Executive Engineer, Rural Works Department, Works Division-2, Darbhanga,
Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Adv.
For the Respondent/s : Smt. Archana Meenakchee -GP6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 21-08-2018

Heard learned counsel for the parties.

In this case, the petitioner is challenging the office order contained in Memo No. 2384 dated 29.7.2016 passed by the Secretary-cum-Appellate Authority, Rural Works Department, Bihar, Patna affirming the office order contained in Memo No. 448 dated 25.1.2016, whereby and whereunder, the Engineer-in-Chief-cum-Disciplinary Authority, Rural Works Department, Bihar, Patna has inflicted punishment of removal from service as well as the relief has been sought for commanding the respondents to reinstate the



petitioner in service along with full salary including consequential benefits.

The petitioner while he was posted as Junior Engineer, Rural Works Department, Work Division Manigachhi, Work Division Darbhanga-2, a trap was conducted on 18.11.2014, he was caught raid handed while taking bribe of Rs. 50,000/- which led to initiation of a Vigilance P.S. Case No. 85 of 2014, he was arrested and put behind the bar, subsequently, he was suspended from service on 19.12.2014 vide Memo No. 4677. After grant of bail and on release from jail on 27.1.2015, he gave his joining in the office of the Executive Engineer, Rural Works Department, Work Division, Darbhanga-2 on 2.2.2015, whereafter, again he was placed under suspension vide office order dated 30.3.2015 contained in Memo No. 958 issued under the signature of Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department, Bihar under Rule 9(1)(a) and 9(1)(c) of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 (herein after to be referred to as 'Rule 2005'). Later on, vide Memo No. 1818 dated 25.5.2015, a decision was taken to initiate a departmental proceeding against the petitioner in terms of Rule 14 and 17 of Rule 2005. The petitioner was served with Memo of Charge wherein an allegation was made which is basically about the incident of trap on account of having taken bribe of Rs. 50,000/-. It will be relevant



herein to state that the Engineer-in-Chief was the Appointing cum Disciplinary Authority of the petitioner, he himself has taken the burden of holding disciplinary enquiry, whereafter, the Engineer-in-Chief found that the charges were not proved against him and no action was taken against the petitioner. The matter was placed before the Secretary of the Department who was not happy with the findings recorded by the Engineer-in-Chief, the appointing authority, remanded back the matter, ultimately he came under the pressure of the higher authority and, ultimately, the Department issued second show-cause notice with the findings of proving the charge which the petitioner has replied and, ultimately, the punishment of dismissal from service has been passed by the Engineer-in-Chief and that has been affirmed by the appellate authority vide Memo No. 2384 dated 29.7.2016. The petitioner, thereafter, filed revision application which has been declared as not maintainable.

Learned counsel for the petitioner submits that order of the Engineer-in-Chief and having been affirmed by the appellate authority is completely illegal in the sense that the enquiry was conducted by the Engineer-in-chief who is the Appointing Authority and if the Disciplinary-cum-Appointing Authority himself arrives to a finding that no case of misconduct is proved against the petitioner, in such circumstances, only way left to the Department is to file an appeal against the order passed by the Disciplinary Authority but,



instead of following this procedure, what they have adopted, a strange procedure by examining the action of the Disciplinary Authority by way of administrative action and directed for review of earlier view. He has further submitted that it is only the Disciplinary Authority who has to exercise his power, he cannot act or pass any order at the behest of his superior authority as the Disciplinary Authority was discharging the quasi judicial function in the sense that he was holding the enquiry to find out with regard to allegation made against him, when the Disciplinary Authority himself has arrived to a finding that no case is made out, the appellate authority cannot interfere in the decision of the Disciplinary Authority. The power can be exercised by the appellate authority when the appeal is filed. This proposition is supported by the judgment passed in the case of Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Ors. Vs. Director General of Civil Aviation & Ors. reported in (2011) 5 SCC 435 wherein it has been decided that the authority, who is in-charge, has to decide on his own independent mind without being influenced by the opinion or dictate of the higher authority or on any extraneous body. This proposition cannot be said to be any way wrong but I have perused the enquiry proceeding and enquiry report of the Enquiry Officer, he himself has committed a mistake in taking the evidence of a person who was never put to cross-examination. At the same time, he has to record his finding of



guilt on the evidence brought during enquiry by the prosecution as the prosecution has to prove the case by bringing the documentary as well as oral evidence whatever is available but, in the present case, it appears that except placing the First Information Report and seizure list, Pre and Post Trap Memorandum, there is nothing to show that any evidence in terms of law has been taken and if the same is missing, in that circumstances, it cannot be said to be a valid piece of evidence be a basis for arriving to the findings of guilt against the delinquent, reliance can be placed on the judgment in the case of Roop Sing Negi Vs. Punjab National Bank & Ors. reported in 2009 (2) SCC 570. It appears that the Enquiry Officer, right from the very beginning to the end i.e. from the order passed by the Disciplinary Authority and the Appellate Authority, is completely without jurisdiction illegal and the same is vitiated.

The matter is remanded back to the competent authority to appoint an independent Enquiry Officer and the entire proceeding should be completed within a period of three months from the date of receipt/production of a copy of this order.

Learned counsel for the State has resisted the relief of reinstatement but, the nature of action taken by the authority concerned cannot be said conform to the judicial propriety. In such circumstances, the order of termination contained in Memo No. 448 dated 25.1.2016 as well as the order contained in Memo No. 2384



dated 29.7.2016 passed by the appellate authority are set aside and the petitioner is reinstated in service but, so far, the arrear of salary is concerned, it will be subject to the result of the departmental enquiry.

It is also made clear that the petitioner will cooperate in the early disposal of the enquiry proceeding, if he fails to cooperate, the Authority will be at liberty to proceed ex-parte in the matter.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.08.2018
Transmission Date	NA

