

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5412 of 2019

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Chandra Mohan Kumar Mishra, Son of Sri Mahendra Kishore Mishra
Resident of Flat No. 3A, Shivam Raj Enclave, Montesary Lane, Boring Road,
P.O. and P.S.-S.K.Puri, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna
3. The Departmental Promotion Committee, through Secretary, Road Construction Department, Government of Bihar, Patna
4. The Bihar Public Service Commission, through Chairman,15, Jawahar Lal Nehru Marg, Bailey Road, Patna Bihar 800001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Mr. Rajat Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha (SC-26) Mr. Balram Kapri, AC to SC-26
For the BPSC	:	Mr. Sanjay Pandey, Advocate Mr. Vivek Anand Amritesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 15-04-2019

Heard the learned counsel for the parties.



The petitioner, who is an Executive Engineer, Road Construction Department, Government of Bihar, Patna, is aggrieved by the order dated 14.06.2017 passed by the Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna, by which he has been punished with stoppage of one yearly increment but without any cumulative effect and the affirmation of the aforesaid order in appeal by order dated 31.10.2017. The petitioner has also challenged the order in review which has been dismissed by the competent authority.

All the orders which have been impugned in the present petition, it has been urged, have been passed in breach of Rule 19 of Bihar CCA Rules, 2005.

The petitioner was asked for a show-cause notice on 24.03.2011 for a preliminary inquiry which was conducted in the year 2009 by a flying squad with respect to the irregularities committed in the construction of a road in the town of Patna. The petitioner had replied to the aforesaid show-cause notice, even though such show cause notice was not by the disciplinary authority, on 11.06.2011. Thereafter, there was no communication from the department. In the



aforesaid show-cause reply, it was submitted by the petitioner that the anomalies which were found in the construction of the concerned road was in the nature of minor aberrations and that it should be accepted to be in tune with the mandate given to the petitioner.

Because of the absence of any communication thereafter, it was only legitimate for the petitioner to have come to the conclusion that his explanation had been accepted. This idea further gained ground with the recommendation of the petitioner for his promotion to the post of Superintending Engineer in the DPC which was held on 26.05.2016. No promotion took place on the recommendation of the DPC referred to above and within six months, another DPC was held in which the recommendation with respect to the petitioner was kept in the sealed cover. The petitioner had no idea about the reason for adopting the sealed cover procedure in his case and hence he sought information regarding the pendency and conclusion of the departmental proceeding through RTI. The information which was provided to the petitioner has been annexed with this petition which *inter alia* indicates that with



respect to the same irregularities having been committed during the construction of that road about which reference has been made in the show-cause notice of the year 2011, another notice was issued in the year 2014 which was not answered by the petitioner despite reminder and a third notice was issued in the year 2016 which also was not responded to. Hence, the petitioner was punished with stoppage of an yearly increment without cumulative effect, which punishment, till the time of the petitioner receiving such information through the RTI, was pending before the Hon'ble Chief Minister of Bihar for approval.

Learned counsel for the petitioner has submitted that thereafter the petitioner was communicated the order impugned dated 14.06.2017 by which he was punished.

From the perusal of the order dated 14.06.2017, two things clearly transpire. Three issues were framed for the petitioner to respond to but the punishment is based on another reason, which was never put to the petitioner. Apart from this, it has been submitted on behalf of the petitioner that in the year 2011, when the petitioner was asked to respond to



the preliminary enquiry conducted by the flying squad, that itself was no notice in the eyes of law as it did not refer to specific charge nor was it issued by the disciplinary authority.

The submission urged on behalf of the petitioner in totality, therefore, is that no departmental proceeding was ever initiated against the petitioner or else charges would have been framed against him. The petitioner had replied to the notice which was given to him in the year 2011 with respect to a preliminary report of 2009 to which he had replied. In the absence of any communication regarding acceptance or otherwise of the aforesaid show-cause, the enquiry (not the domestic enquiry in exact sense of the term) was presumed to have been completed.

In any view of the matter, Mr. Ashish Giri, learned counsel for the petitioner has submitted that the notices in the year 2014 and 2016 were never served upon him. Thus, no charge having been framed against the petitioner, to his knowledge and the petitioner not having received any such notice for answering to the aforesaid charges, the order of punishment is unsustainable in the eyes of law.



The punishment being based on an additional ground has been conceded by Mr. Manoj Kumar Ambastha, learned advocate for the State.

The order, on the fact of it, is unsustainable in the eyes of law and, therefore, this Court intends to and quashes the same.

The order passed in appeal and review are also consequently set aside.

This leaves the petitioner without any punishment against him and, therefore, the recommendation of the DPC which is in sealed cover ought to be taken note of in taking a decision by the concerned respondents regarding the promotion of the petitioner to the higher post of Superintending Engineer. Such decision shall be taken by the concerned authority within a period of eight weeks from the date of production/communication of a copy of this order before the authority concerned.

Needless to state that if the petitioner has not been recommended for promotion in the DPC, that would entail a separate cause of action for which no opinion has been



expressed by this Court. If at all, the petitioner has been recommended for promotion, the concerned authority shall, before passing any necessary/sequel order, take into account that juniors to the petitioner have been granted promotion from an earlier date. Taking into account all these facts, the concerned authority shall take a decision within the time so stipulated, by a reasoned order.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	16.04.2019
Transmission Date	

