

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7147 of 2015

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Upendra Choudhary Son of Late Ganesh Choudhary Resident of Itahari, P.O.
Fudkichak, P.S. Gogari, District - Khagaria.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Commissioner-cum-Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief Madhya Water Resources Department, Govt. of Bihar.
5. The Executive Engineer, Rural Works Department, Works Division - 2, Munger.
6. The Superintending Engineer, Rural Works Circle, Munger, District - Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi Ms. Shally Kumari
For the Respondent/s	:	Mr. Anirban Kundu, SC 24

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 10-07-2019 Heard Mr. Sahi for the petitioner as also the learned

Counsel appearing for the State.

The very short point raised for consideration in the instant proceeding is whether without serving second show cause notice along with copy of the enquiry report the delinquent can be visited with punishment in a duly constituted departmental proceeding on the basis of charge memo.

In the instant case, the petitioner was a Junior Engineer (Civil). Charge memo dated 6.2.2012 was served upon



the petitioner. An enquiry was conducted by the conducting officer and enquiry report was submitted by the Enquiry Officer, to the Disciplinary Authority on 10.9.2012.

The case of the petitioner is that thereafter he has been visited with the punishment impugned in the instant proceeding under order dated 11.6.2013 issued by the Engineer in Chief, Madhya, WRD, Patna.

The punishment that was imposed upon the petitioner falls within the category of minor punishment. The same however is the outcome of the procedure on the basis of charge memo after subjecting the petitioner to a departmental enquiry before the Enquiry Officer. Once the procedure has been followed by issuance of a charge memo under Rule 17 of the Bihar CCA Rules 2005, then the procedure for conduct of such enquiry is required to be followed. The respondents however have not followed the procedure laid down under the Bihar CCA Rules 2005. The order of punishment has been communicated to the petitioner without issuing second show cause notice or serving copy of the enquiry report on the petitioner. This is the specific grievance of the petitioner raised in the writ petition.

The respondents in the two counter affidavits filed in the instant proceeding have not denied the said specific



assertion of the petitioner. In the first counter affidavit they have taken the stand “there is no relevancy of these points”. In the second counter affidavit they have specifically averred

“.... the Conducting Officer submitted his report before the Departmental Disciplinary Authority and same was duly considered by the competent authority. After considering the every aspects of his explanations, the Engineer-in-Chief (Madhya), W.R.D., Patna awarded the following punishment i.e. (1) Censor for the year 2004-05, (ii) stoppage of two increments with non cumulative effect, and (iii) for the suspension period, the decision will be taken after issuance of notice and show cause of the petitioner after revoking the suspension of the petitioner.”

The specific assertion of the petitioner that he has been visited with the order of punishment in a duly constituted departmental proceeding on the basis of enquiry report, without issuing any second show cause notice and without serving copy of the enquiry report, stands admitted in view of the said averments made in the counter affidavit filed by the respondents.

Counsel for the State tried to convince this Court that the issue is not relevant having regard to quantum of punishment against the petitioner.



This Court would only observe that once a duly constituted proceeding have been resorted to under Rule 17 of the Bihar CCA Rules 2005, the authorities were obliged to proceed as per requirement contained in the Bihar CCA Rules 2005 for conducting the departmental proceeding. Submission of the Counsel for the State therefore does not merit any consideration in view of the facts and circumstances of the instant case.

The order of punishment dated 11.6.2013 stands quashed. The matter is remitted to the stage of submission of enquiry report before the Disciplinary Authority, . The petitioner should be treated as under suspension and the Disciplinary Authority may proceed from that stage in accordance with the provisions contained in Bihar CCA Rules 2005, treating the proceedings as having been converted under Rule 43 B of the Bihar Pension Rules. Let the proceeding be concluded thereafter expeditiously and without undue delay,

The writ petition is allowed to the aforesaid extent.

(Madhuresh Prasad, J)

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