

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9889 of 2011

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Narendra Kumar Son of late Prem Raj singh Presently acting as Assistant Sub Engineer Building, Subdivision Rajgir under Bulding Division, Nalanda, Biharsharif.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Building Construction Department, Government of Bihar, Patna.
3. Chief Engineer, Bihar Wing, Vishwesharaiya Bhawan, Patna.
4. Executive Engineer, Nalanda Building Division, Biharsharif.
5. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. Special Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. The Additional Secretary, Road Construction Department, Govt. of Bihar, Patna.
8. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
9. Executive Engineer, Road Construction Department, Road Division, Lakhisarai, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Sr. Adv. Mr. Ambuj Kumar Chandra, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha, SC-19 Mr. Akhilesh Kumar Sinha, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 08-05-2019

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order of punishment contained in Memo No. 5039(S) dated 29.4.2011 (Annexure-5) by which the petitioner has been inflicted punishment of reduction of pay at the bottom for indefinite period



as no period has been mentioned as to for how long this punishment will operate against the petitioner.

At the relevant point of time, the petitioner was Assistant Engineer in the Road Construction Department posted at Lakhisarai Division. The Principal Secretary, Road Construction Department made an inspection at Suryagarha site where the road was being constructed through mechanical process, making mixture for carpeting. The J.C.B. was used for carrying load of stone chips, it was found while lifting the stone chips was mixing mud and that mixture was being used for construction of road and it was found that the sand of proper quality was not being used, causing adverse impact on the quality of the road. It transpired that he was not making inspection of site regularly, log book was not properly maintained and, on account of failure to supervise, a charge-sheet was issued dated 24.9.2008 asking explanation from the petitioner and, in pursuance thereof, the petitioner filed his show-cause reply in detail having stated that while lifting the mixture of material, might have J.C.B. machine lifted the soil also but, the quality of road was not compromised. Before beginning of the construction of road, proper inspection of site was done, materials which were used for construction were tested in the laboratory and, when it was found to be up to mark, the materials



were allowed to be used for construction of the road. So, under some mistake, the soil might have been lifted by the J.C.B. machine but, as and when, he could know about the same, he forthwith directed to replace another J.C.B. The mistake was committed by the driver of the J.C.B. machine and, as such, he should be relieved from the charge.

With regard to second allegation, he replied that he has discharged the duty diligently and honestly and, for that, he has drawn attention of this Court towards the letter of the Superintending Engineer no. 1169 dated 24.12.2007 indicating in what manner he was discharging the function as an Assistant Engineer.

With regard to charge no.3, it has been stated that it is important to note that the Executive Engineer under whom he was working, has not made such an allegation against the petitioner as he was making inspection regularly. So, the charge has not leg to stand.

With respect to charge no.4, so far maintaining the records, it has been stated that the Assistant Engineer at the site is in-charge and, for that, site book order was opened and, time to time, the senior authorities have made inspection, entries made in the site order book including inspection of the Executive Engineer,



from time to time, itself reflects, the petitioner has not committed any fault thereby disputed all the charges leveled against him.

After considering the show-cause, the order of punishment has been passed of reduction at the lowest level for indefinite period.

Learned counsel for the petitioner submits that the entire proceeding suffers from illegality as having been not done in terms of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, what they were required to follow under the Rule has not been done at all. The inspection was made by the Principal Secretary, Road Construction Department, he has prepared the report, on that basis, the charge-sheet has been framed but, fortunately or unfortunately, the Principal Secretary has neither been examined before the Enquiry Officer nor the report has been proved, when the petitioner has challenged the contents of the report of the Principal Secretary under the rule, was to come forward to depose before the Enquiry Officer. Had there been not a challenge, in that circumstances, the undisputed record could have been marked but, in the event, when the Government servant is challenging the statement incorporated in the report, in that circumstances, it is incumbent upon the prosecution to prove the case by brining the person who authored the report, in support,



placed reliance on Section 17 (14) of Rule, 2005 which postulates that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. So this part of provision in the rule 17(14) having been violated, the prosecution has not examined any witness to substantiate the allegation mentioned in the charge-sheet, reliance can be placed to the judgment of Roop Singh Negi Vs. Punjab National Bank & Ors. reported in (2009) 2 SCC 570 and in the case of State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in 2010 (2) SCC 772. In Saroj Kumar Sinha, it has been held that the enquiry has to be conducted fairly and properly whereas in the case of Roop Sing Negi, it has been held that for proving the charge, when it is disputed, the witness should come forward and substantiate the allegation. In the present case, the Principal Secretary was the person who had inspected the site but, failed to appear and substantiate the allegation made against the



petitioner. Further, learned counsel for the petitioner submits that the punishment of reduction in rank for indefinite period is completely dehors to the provision of Rule 14(vii) which prescribes the reduction to a lower stage in time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. So, as per petitioner that there should not be punishment for indefinite period and the same is completely not consonance with the provision of rule 14 which prescribes the period of punishment should be for definite period. Reliance can be placed to the judgment reported in the case of Raj Kishore Sinha Vs. State of Bihar & Ors. reported in 2016 (4) PLJR 7 prescribing in what manner the punishment can be inflicted by the competent authority. It has been stated that the reduction of pay-scale should be for a particular period, it cannot be for an indefinite period. It has further been held that inflicting punishment lies within the domain of the employer but, it should be compatible with the service rule, failure to follow, the government servant would remain under unsurmountable problem in the sense, he will remain at same stage all times to come, never



his salary will be enhanced which is not an idea of inflicting such punishment to a government servant.

Per contra, learned counsel for the State submits that the action that has been taken is as per rule and there is no illegality committed by the authority concerned in holding the enquiry.

Having considered the rival contentions of the parties, it is very much clear that the charges have been framed in view of the inspection conducted by the Principal Secretary, Road Construction Department having been found that the construction of road was not of proper standard, has found the stone mixture with bitumen had some soil, were also being used for carpeting the road which has been denied by the petitioner. In such situation, the authority was required to examine the witness in support of the allegation made against the petitioner but, failed to follow the procedure. In such circumstances, it is complete failure to observe the natural justice in the sense that when the allegation is to be proved on the basis of report but, in the present case, after obtaining show-cause, directly the punishment has been inflicted against the delinquent in completely perfunctory and improper manner without following the procedure, further the order of punishment is also cannot be sustained in view of the fact that the period is not mentioned in the order of punishment dated



29.4.2011 and the enquiry report dated 17.4.2009 is also not based upon any material evidence as veracity of report has been challenged, cannot be used as an evidence for proving the charge.

Accordingly, both the order of punishment contained in Memo No. 5039 (S) dated 29.04.2011 and the enquiry report dated 17.4.2009 are set aside and the matter is remanded back for holding a fresh enquiry, should be concluded within a period of six months subject to the cooperation extended by the petitioner, the benefit, if any, will be subject to the final result of the proceeding.

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

If the petitioner has not been paid any subsistence allowance during the period of suspension, the authority must ensure payment of the same.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2019
Transmission Date	

