

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12642 of 2017

Brindaban Rai, son of Late Shankar Dayal Rai, Resident of Tribhuban Gopal Enclave, Flat No. F1, Finance Department Colony, Khajpura, P.S. Rajiv Nagar, District – Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Road Construction Department, Bihar, Patna.
4. The Special Officer-cum-Deputy Secretary, Road Construction Department, Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner : Mr. Binod Kumar Kanth, Sr. Advocate.

Mr. Prabhu Nath Pathak, Advocate.

For the Respondents : Mr. Ashok Kumar Dubey, AC to AAG-11

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 14-02-2019

Heard, Mr. Binod Kumar Kanth, learned senior advocate for the petitioner and Mr. Ashok Kumar Dubey, learned AC to AAG-11.

2. The petitioner has challenged the order dated 25.10.2016 contained in Notification No. 8724(S) by the Secretary, Road Construction Department, Bihar, Patna by which the order of punishment of the petitioner, awarding lower scale of Assistant Engineer to him has been reaffirmed, in derogation of the direction issued by this Court in CWJC No. 17748 of 2014.

3. The facts of this case are being recounted in brief.



4. While the petitioner was posted as Junior Engineer, Road Division, Kodarma under the Road Construction Department, Government of Bihar Patna, a departmental proceeding was initiated against him in the year 2003 for having received 32.60 MT of bitumen on the basis of challan of the Contractor. The enquiry officer, vide his report dated 12.05.2004, gave a clean chit to the petitioner, holding that he had received 32.60 MT of bitumen from transporters challan up to 20.03.1994 i.e. much before 12.10.1994 when an instruction was issued by the Director, (Purchase & Transport), Road Construction Department, Bihar Patna for not receiving bitumen from transporters challan. It is the case of the petitioner that the aforesaid amount of bitumen, accepted through transporter's challan was regularized and no proceeding was initiated with respect to any shortage of the aforesaid bitumen.

5. A second show cause notice was issued to the petitioner by the disciplinary authority without assigning any reason for differing with the findings of the enquiry officer. A third show cause notice also was issued to him on 30.07.2008 against the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and thereafter the petitioner was inflicted with punishment of reduction to the lower scale of Assistant Engineer vide



order dated 16.03.2010 contained in Notification No. 3909(S) by the Joint Secretary, Road Construction Department, Bihar, Patna.

6. The aforesaid order was challenged by the petitioner before this Court vide CWJC No. 17748 of 2014. The major ground of assail and which ground was taken note of by this Court was that in view of the disciplinary authority differing with the report of the enquiry officer, reasons had to be assigned for the same and response of the delinquent had to be obtained in view of the judgment of the Supreme Court in ***Punjab National Bank & Ors. Vs. Kunj Behari Misra***, reported in ***(1998) 7 SCC 84*** and ***Lav Nigam Vs. Chairman & MD, ITI Ltd, and another***, reported in ***(2006) 9 SCC 440***. This Court set aside the order of punishment and remitted the matter to the respondents with liberty to them to proceed afresh from the stage of the second show cause notice and to conclude the proceeding, if so begun within a period of four months.

7. It has been urged on behalf of the petitioner that no action was taken by the respondents and when the petitioner was being bypassed for being promoted to the post of Executive Engineer, he was forced to file a contempt petition (MJC No. 2568/2016) during the pendency of which, a second show cause notice was issued



to the petitioner on 30.08.2016. The second show cause notice indicated about a Finance Department Resolution No. 7148 dated 23.10.1984, according to which any article/material had to be obtained through the Director General (Supplies and Disposal) through letter of credit and any ignorance of the aforesaid instruction could not have been condoned. It was therefore asked of the petitioner his response to bypassing the aforesaid requirement and obtaining bitumen on the basis of transporter's challan.

8. Be it noted that the aforesaid circular of the Finance Department was never referred to by the enquiry officer during the enquiry in the first instance and therefore such ground in the second show cause after the order of this Court amounted to raking up an absolutely new issue which according to the petitioner was not permissible.

9. On the aforesaid grounds, it has been urged on behalf of the petitioner that the order impugned suffers from complete lack of application of mind and it has been asserted that while passing the aforesaid order, the concerned respondent authority has only showed/displayed unnecessary obstinacy in not responding to the direction of this Court and sticking to its own guns.

10. Learned counsel appearing for the State however has defended the order impugned on the ground



that the direction of this Court was complied in true letter and spirit and the petitioner was served with second show cause notice. He has further submitted that the reason given by the petitioner for not having followed the circular of 1984 on the ground of his ignorance of the aforesaid circular is absolutely unacceptable and the same could not have been countenanced or accepted by the disciplinary authority. Thus, it has been argued that the directions/guidelines of the Finance Department has been breached leading to the only inference that the petitioner did not have the requisite respect for the Government orders which is not befitting the conduct of a Government servant. He has further submitted that the punishment meted out to the petitioner is also not commensurate with the charge proved against him.

11. From the perusal of the order impugned, it clearly appears that the disciplinary authority did not at all take into account that the circular of 1994 prescribing taking of bitumen on the basis of transporter's challan came only in the month of October, 1994 whereas the petitioner had accepted the transporters challan much before the aforesaid circular. Apart from this, it has not been taken into account by the disciplinary authority that the aforesaid acceptance of the bitumen was regularized and neither the quality of it was found to be substandard



nor the quantity deficient. In that view of the matter, merely because in the past there had been some irregularity with respect to purchase of bitumen leading to registration of a criminal case could not have been a ground for subjecting the petitioner to departmental proceeding. It has also been pointed out by the learned senior advocate appearing for the petitioner that the petitioner was never subjected to any investigation in the Coaltar scam, as it was popularly called during the days when investigation into such scam was being conducted pursuant to the lodging of the FIR.

12. It further appears that the circular of 1984, which finds mention in the second show cause notice was never referred to by the enquiry officer. It is a matter of common knowledge in service jurisprudence that an enquiry officer cannot expand the scope of the enquiry and if this was not the charge viz. violation of a circular of 1984, such ground could not have been taken by the disciplinary authority for differing with the opinion of the enquiry officer. If at all such breach was to be pressed into consideration, it could have been possible only by referring the matter to the enquiry officer to subject the petitioner to a fresh enquiry with respect to the aforesaid charge. Without relegating the issue (circular of 1984) to the enquiry officer, it could not have been taken reference of



and treated as a ground for differing with the opinion of the enquiry officer by the disciplinary authority.

13. There is force in the submission of the learned counsel for the petitioner that even with the remand of the present case, it would not be open for the disciplinary authority to put the petitioner to an enquiry as to why the circular of 1984 and not 1994 was not taken into account or followed.

14. For the reasons aforesaid viz. leaving the issues raised by the petitioner unaddressed, the order impugned cannot be sustained in the eyes of law and therefore the same is set aside.

15. The matter is again remitted to the disciplinary authority to pass a fresh order in accordance with law, keeping in mind the charges against the petitioner and his response thereto. If a fresh charge/fresh ground is to be considered, it would require the matter to be relegated to the enquiry officer, thereby initiating a *de novo* enquiry on a fresh ground of breach of a circular of 1984.

16. The disciplinary authority while passing a fresh order in accordance with law shall also take into account that the circular of 1984 about which, for the first time reference has been made in the second show cause notice after the order of the Writ Court was never acted



upon or else there would have been no need for coming out with a circular of 1994 prohibiting acceptance of bitumen on the basis of transporter’s challan.

17. The process of writing out a fresh order is to be completed within a period of sixty days, keeping in mind that the promotional avenues of the petitioner would be marred otherwise. This Court also makes it clear that if at all the promotional prospect of the petitioner would be required to be considered in the meanwhile, the process of sealed cover procedure shall be applied.

18. With the aforesaid direction/observation, the writ petition is allowed and disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2019
Transmission Date	

