

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.803 of 2016

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Indrajeet Kumar Son of Late R.N. Ram resident of Jai Mahabir Colony,
Sandalpur, Road No. 5, Police Station Bahadurpur, District Patna

... .. **Petitioner**

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Road Construction Department, Vishwehwaraiya Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Deputy Secretary (Vigilance), Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.

... .. **Respondents**

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Appearance :

For the Petitioner : Mr.Rupak Kumar, Advocate
For the Respondents : Mr.A.K. Choudhary- AAG-13

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 04-01-2019

Heard learned counsel for the petitioner as well as
learned counsel for the State.

2. Learned counsel for the petitioner has challenged
imposition of punishment of withholding of two annual increments
with cumulative effect under order bearing Memo No. 4235(S)
dated 15.5.2015 notified by the Road Construction Department,
Government of Bihar.

3. Submissions made on behalf of the petitioner are that
earlier on 9.6.2008 the petitioner had been issued a show cause in
purported exercise of power under Rule 19 of the Bihar
Government Servants (Classification, Control & Appeal) Rules,
2005 (herein after referred to as 'the Bihar CCA Rules, 2005') for



proposed minor punishment. The petitioner has given response to the same on 14.11.2008.

4. Allegation for which the petitioner was issued a show cause was of using sub standard bricks (having lesser compression) in construction of a road undertaken during his tenure as Executive Engineer in the Department. Others had also been proceeded against for the same allegation. Reply of the petitioner dated 14.11.2008 was pending before the Department. In the year 2011 one charge memo dated 12.09.2019 was issued to the petitioner in purported exercise of power under Rule 17 of the Bihar CCA Rules, 2005. Charge memo was also in respect of the same allegations. The petitioner responded to the same by submitting his written defence on 31.10.2011. The petitioner denied all the charges levelled against him.

5. Pursuant to enquiry, Report was submitted by the Enquiry Officer exonerating petitioner from all the charges. Subsequently, it appears that second show cause notice was issued to the petitioner on 9.12.2014. The second show cause notice issued by the Disciplinary Authority communicates disagreement on the conclusion of the Enquiry Officer. The Disciplinary Authority under the second show cause dated 9.12.2014 in purported exercise of jurisdiction under Rule 18 of the Bihar CCA



Rules, 2005 has communicated point of disagreement in respect of charge no.1.

6. It would be relevant to note that disagreement communicated by the Disciplinary Authority is not his own. Brief background of the disagreement is that upon submission of enquiry report a Technical Committee was constituted to go into the same allegations levelled against the petitioner keeping in view the technical nature of allegations regarding use of substandard bricks in the construction of road undertaken during petitioner's tenure. The Disciplinary Authority's disagreement with the findings of the enquiry report exonerating the petitioner of all the charges, is based on report of Technical Committee.

7. Learned counsel for the petitioner has made two submissions. His first submission is that once the proceedings had been initiated under Rule 19 of the Bihar CCA Rules, 2005 for imposition of a minor penalty, it was incumbent upon the authorities to take the same to its logical conclusion. He submits that in view of Rule 19 of the Bihar CCA Rules, 2005, the same could not have been abandoned midway. The authorities could not have resorted to proceedings by issuance of fresh charge memo on 12.9.2011 in purported exercise of power under Rule 17 of the Bihar CCA Rules, 2005. It is the submission of the learned counsel



for the petitioner that from bare reading of Rule 18 of the Bihar CCA Rules, 2005 it can be inferred that once the authority adopted the procedure under Rule 19 of the Bihar CCA Rules, 2005 for imposition of minor punishment, he was required to conclude the exercise and such fresh charge memo could not have been issued.

8. Learned counsel for the petitioner has also placed reliance on the case of **Ashok Kumar Singh**, who was also proceeded against for the same charge arising out of the same transaction. Relying upon the judgment in the case of **Ashok Kumar Singh** in C.W.J.C.No. 496 of 2017 it is submitted that there was no such provision which enabled the authorities to review/revise the order of minor punishment and to resort to the procedure for inflicting major punishment against the delinquent. The only provision which contains any power for enhancement/modification of punishment is provided under Rule 28(1) of the Bihar CCA Rules, 2005. The authorities, only if they were of the opinion that punishment was to be enhanced, had to resort to the procedure prescribed under Rule 28 of the Bihar CCA Rules, 2005. That also within the time frame specified therein. Since there is no compliance with the procedure prescribed under Rule 28 of the Bihar CCA Rules, 2005, exercise of jurisdiction for imposition of major penalty in respect of the petitioner is therefore



not in accordance with law. He submits that the case of the petitioner is fortified by the decision in this respect in the case of **Ashok Kumar Singh (Supra)**.

9. Learned counsel for the petitioner has also drawn attention of the Court towards the specific pleadings made in paragraphs 17 and 18 of the writ petition relying upon which, this Court in the earlier order dated 16.1.2018 had formulated two specific queries from the State Government. The two queries which were raised in the earlier order as as follows:-

“(a) ‘The disciplinary rules’ does not conceive of a constitution of any Technical Committee to appreciate the finding of the Enquiry Officer; and

(b) The constitution of the Technical Committee has been criticized by the Departmental Minister as manifest from the file notings present at Annexure 12 who has cancelled such constitution of the Committee for enquiry into a disciplinary proceeding and thus the very foundation for the punishment has been removed.”

10. Referring to the two supplementary counter affidavits filed thereafter by the State Government, learned counsel for the petitioner submits that the issues raised by this Court in the earlier order has been unanswered. It is the submission of learned counsel for the petitioner that the petitioner would be entitled to the same relief as has been granted to **Ashok Kumar Singh (Supra)** and that the entire second round of the proceedings



initiated under charge memo dated 12.9.2011 stands vitiated in view of Rule 28(1) of the Bihar CCA Rules, 2005.

11. On specific query being made by this Court, learned counsel for the petitioner referring to the averments made in the writ petition has very fairly submitted that in case of the petitioner, no minor punishment has ever been notified pursuant to the show cause issued to him on 9.6.2008.

12. Learned counsel for the State, on the other hand, submits that the petitioner has responded to the second show cause issued on 25.12.2014 relying upon the decision of the Technical Committee. Petitioner's response to the points of disagreement of the Technical Committee was without raising any objection in respect of constitution of such Technical Committee and as such he cannot be permitted to challenge the subsequent decision based on its report/conclusion.

13. Dealing with the first submission advanced on behalf of the petitioner which has been advanced relying upon decision of this Court in the case of **Ashok Kumar Singh (Supra)** this Court would observe that the petitioner cannot claim parity with said **Ashok Kumar Singh (Supra)**. In the case of **Ashok Kumar Singh (Supra)** pursuant to action initiated under Rule 19 of the Bihar CCA Rules, 2005 minor punishment of censure had actually



been notified/imposed on 27.9.2010 by the State Government under its notification bearing No.14095(S). It was in view of the said facts that this Court in the proceedings arising out of C.W.J.C.No. 496 of 2017 in the case of **Ashok Kumar Singh (Supra)** had observed that initiation of second round of proceeding for the same allegations by the State has no lawful sanction. Since minor punishment of censure had already been notified, this Court in case of **Ashok Kumar Singh (Supra)** had observed that imposition of fresh major penalty by initiating second round of proceedings under Rule 17 of the Bihar CCA Rules, 2005 was dehors the powers vested in the authority under Rule 28 of the Bihar CCA Rules, 2005.

14. The facts in the instant case are essentially different. Since admittedly no minor punishment had been notified as a result of initiation of proceedings under Rule 19 of the Bihar CCA Rules, 2005 on 9.6.2008, there is no occasion for any enhancement/revision of the punishment and as such there can be no requirement to resort to the revisional procedure under Rule 28 of the Bihar CCA Rules, 2005. Admittedly, proceedings which were initiated for imposition of minor punishment were inconclusive, and no punishment was imposed pursuant to the same.



15. Charge memo was issued to the petitioner on 12.9.2011. The petitioner has responded to the same without raising any objection regarding the same being second round proceedings. In the opinion of this Court, the petitioner has rightly not raised any such objection as no final minor punishment had ever been notified pursuant to initiation of proceedings under Rule 19 of the Bihar CCA Rules, 2005 by issuing show cause notice on 9.6.2008. Since the earlier proceeding based on charge memo under Rule 19 of the Bihar CCA Rules, 2005 were never concluded and no punishment awarded as a result of the first proceeding remaining inconclusive, submission that initiation of proceedings under charge memo dated 12.9.2011 is a second round is factually and legally unsustainable. The petitioner has not been able to make out a case regarding proceedings for major punishment, initiated by charge memo dated 12.9.2011 being illegal/not maintainable.

16. As regards other submission advanced by the petitioner's counsel regarding validity of the Technical Committee to appreciate the findings of the Enquiry Officer, this Court would observe that no response has been given by the State to the Court's specific query raised in the earlier order dated 16.1.2018. The Bihar CCA Rules, 2005 provides the procedure for conducting



departmental proceedings. Nowhere does it conceive of constitution of any Technical Committee to appreciate the findings of the Enquiry Officer. As is manifest from the file notings contained in Annexure 12, even the departmental minister criticized the constitution of Technical Committee to appreciate the findings of the Enquiry Officer. That apart it is a trite law based on the provisions contained in Rule 18 of the Bihar CCA Rules, 2005 that consideration of the Enquiry Officer has to be done by the Disciplinary Authority and not by any Technical Committee. Rule 18 of the Bihar CCA Rules, 2005 provides for action on the enquiry report. Discretion to agree or disagree with the findings of the Enquiry is with the Disciplinary Authority. But the discretion as to be exercised in the manner prescribed under Rule 18 of the Bihar CCA Rules, 2005. Constitution of Technical Committee as has been done in the instant case is not contemplated in Rule 18 of the Bihar CCA Rules, 2005. There is no independent disagreement of the Disciplinary Authority with the findings of the Enquiry Officer by assigning any independent reason on basis of evidence/material brought on record in the proceedings on preponderance of probability. In the circumstances, the second show cause notice dated 9.12.2014 issued by the Disciplinary Authority communicating disagreement



of the Technical Committee is not sustainable as the same is apart from being based on extraneous consideration, also contrary to the procedure prescribed under Rule 18 of the Bihar CCA Rules, 2005. That being so, this Court would quash the second show cause notice dated 9.12.2014 as well as consequential order of punishment dated 15.5.2015 arising out of and as a result of such illegal procedure.

17. In view of quashing of the second show cause dated 9.12.2014 and the order of punishment dated 15.5.2015 this Court would observe that the petitioner is entitled to be reinstated in service forthwith along with all consequential benefits.

18. This order however will not preclude the respondent authorities from proceeding against the petitioner from the stage of second show cause by the Disciplinary Authority, in accordance with law.

19. The writ petition is allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2019.
Transmission Date	NA

