

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14814 of 2016

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Badri Prasad Sah son of Late Muneshwar Prasad Sah resident of Mohalla -
Rajendra Nagar, Road No. 6C, Flat No. 302, Haripriya Apartment, P.O. -
Kadam Kuan, District - Patna - 800016.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Joint Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Executive Engineer, Patliputra Building Division, Department of Building Construction, Government of Bihar, Patna.
5. The Executive Engineer, Tax Division, Building Construction Department, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amrit Abhijat, Advocate
		Mr. Manoj Kumar Gupta, Advocate
For the Respondent/s	:	Mr. Harishankar Roy, AC to AG.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 13-08-2019

I.A. Nos. 302 of 2017 and 4907 of 2017

In these interlocutory applications, a prayer has been made to amend the writ petition and the facts mentioned in these applications should be treated to be a part of the main writ application.

Accordingly, both these interlocutory applications are allowed and the averments made in these interlocutory applications will be treated to be the part of the main writ



petition.

CWJC No.14814 of 2016

Heard learned counsel for the petitioner and learned counsel for the State.

In the present case, the petitioner is challenging the order of punishment dated 15.12.2016 contained in Memo No.3655 by which the petitioner has been awarded major punishment of reduction of rank from the post of Executive Engineer to the post of Assistant Engineer.

The petitioner was posted as Assistant Engineer, Bridge Investigation Division, C.D.O, Road Construction Department, Patna from October, 2004 to September, 2007. He was allotted the Quarter No.H-3, Punaichak, Patna on 1.03.2005 and he remained there up to September, 2007. As per the petitioner, he vacated the quarter on 1st October, 2007. On account of his transfer to Purnea, he had gone to the office to handover charge of quarter to Assistant Engineer, Building Division, Patna, but the office was found locked, hence, he handed over the charge of quarter to the caretaker, namely, Amlesh Kumar Sinha, who received the application of vacating quarter so that it may be allotted to another person and requested for no dues certificate so that it will be easy to obtain



LPC and he would be able to get salary from his new place of posting with promotion on the post of District Engineer, District Board, Purnea where he assumed charge on 17.09.2007, but the quarter was not allotted to the petitioner at Purnea rather he remained there on rent. The petitioner was getting the salary itself suggests that LPC was sent from Patna before the initiation of inquiry proceeding where made an allegation that Quarter No.H-3, Officers Flat, New Punaichak, Patna was allotted in his name and he did not stay in the said quarter. The caretaker Ramu and the Junior Engineer Kapildeo Chaudhary in connivance with the petitioner, let out the quarter on rent to a retired CPWD Officer Sri Thakur Ji and was taking Rs.4000/- as a rent, whereas he did not have any relationship with Thakur Ji close or remote. It has further been mentioned that on the spot inquiry, it transpired that he had let out the quarter to Sri Dinkar Mishra on payment of rent which is completely illegal. Though he was transferred from Patna to Rural Works Division, Katihar, but kept the quarter in his possession and at the same time, he was also taking the house rent allowance illegally. There was no material to show that he had handed over the quarter to the Estate Officer that itself shows that he had kept the quarter in his possession and was taking rent from Dinkar Mishra, which



is completely illegal.

The petitioner was served the charge sheet, he filed explanation in which he denied the allegation, having stated, before leaving Patna, he had handed over the quarter allotted to him to the caretaker and in support of his claim he has produced a letter dated 10.01.2007 bearing initial of certain person claiming initial of the caretaker. After his departure from Patna, Rampati and Kapildeo Chaudhary under conspiracy let out the quarter on rent to a retired person of CPWD. It appears that on the first part of charge, it has been mentioned that this quarter was given to one Thakur Ji, but subsequently this charge sheet shows that one Dinkar Mishra was found in possession of quarter, who was made statement before the enquiry committee that he used to pay the money to the petitioner to the extent of deduction from his salary.

In the proceeding, neither this Thakur Ji has been examined nor Dinkar Mishra has been examined nor the member of the enquiry committee, which conducted enquiry, recorded statement of Dinkar Mishra, reported illegal occupation, has been examined.

It also does not appear that any witness in support of the allegation has been examined in the present proceeding. It



appears that the enquiry officer has not found the charge no. 1 proved. So far as charge no.2 of letting out the quarter to Dinkar Mishra, it has been recorded that involvement of the petitioner in conspiracy cannot be ignored, but Dinkar Mishra has said that he used to give the money to the extent of deduction from the salary of the petitioner. So far as the charge no.3, it has been recorded that the same has partly been proved and charge no.5 has been found to be proved, but the departmental proceeding has not been done in accordance with Bihar Government Employee Discipline and Appeal Rules, 2005, which prescribes that charge has to be proved by oral as well as by documentary evidence which has not been followed in the present case, entire inquiry report based on the suspicion of involvement of the petitioner in letting out the quarter on rent. Reliance can be placed in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors., reported in (2009) 2 SCC 570 and in the case of State of U.P. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772.***

In such view of the matter, the inquiry report dated 28.02.2013 and order of punishment dated 15.12.2016 as well as review order dated 31.05.2017 are quashed and the matter is remanded back to the authority concerned and if so like, he may



conduct the fresh inquiry in accordance with law after the stage of charge sheet.

With this observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.08.2019
Transmission Date	N.A.

