

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11922 of 2017

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Shreeniwas Prasad Son of Late Ram Chhabila Prasad, Resident of Village-
Bhagar, P.O.- Bhagar, P.S.- Siswan, District- Siwan Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. Joint Secretary Management, Water Resources Department, Government of Bihar, Patna.
4. Joint Secretary, Government of Bihar, Water Resources Department, Bihar, Patna.
5. Chief Engineer, Water Resources Department, Birpur Supaul.
6. Executive Engineer, Eastern Embankment, Division-2, Water Resources Department, Birpur (Supaul).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Adv.
		Mr. Santosh Kumar Mishra, Adv.
For the Respondent/s	:	Mr. Akash Chaturvedi, AC to SC11

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 22-07-2019

Heard learned counsel for the parties.

In this case, the petitioner is challenging two orders, firstly the order of punishment contained in Memo No. 547 dated 10.4.2017 (Annexure-11) by which awarded the punishment of censure for the year 2016-17 including stoppage of one increment without cumulative effect and, secondly, the petitioner is challenging the order contained in Memo No. 1733 dated 23.6.2017 (Annexure-14) by which the promotion given to the petitioner has been canceled. The petitioner is also challenging the



order contained in Memo No. 1996 dated 13.11.2017 (Annexure-A) rejected the review application filed by the petitioner reiterating the same order, thereby affirmed the order of punishment passed against the petitioner.

The short fact of this case is that the petitioner was posted as Assistant Engineer in the office of Chief Engineer, was discharging the duty to the satisfaction to the authority, vide notification no. 1706 dated 6.7.2016, was promoted to the post of Executive Engineer, later on, vide notification no. 4313 dated 5.8.2016 (Annexure-2), he was transferred from the office of the Executive Engineer to Eastern Embankment Division No.-2, Birpur (Supaul) where one Shib Nath Rudra, Senior Accounts Clerk of that office, vide memo No. 913 dated 17.8.2016, he was transferred to the office of the Executive Engineer, Jamania Pump Canal Division, Mohania on the charges of misbehavior with a female employee in the office which was challenged by Shib Nath Rudra in C.W.J.C. No. 14023 of 2016 taking a plea that it is penal in nature and, as such, is not sustainable but, learned Single Judge refused to accept the plea and dismissed the writ petition vide order dated 31.8.2016 but, he did not stop there and filed L.P.A. No. 1834 of 2016 which was allowed vide order dated 28.9.2016 recording therein that the stigmatic order of transfer is not



permissible in law. However, the liberty was given, the competent authority, if so like, may transfer Shib Nath Rudra on administrative ground.

“The interference with the order, dated 17.08.2016, shall not bar the competent authority from transferring the petitioner-appellant, if the situation, in the interest of public and/or administration, so warrants. We also make it clear that our interference with the order, dated 17.08.2016, shall not create any legal impediment on the part of the competent authority to proceed against the petitioner-appellant in accordance with law for the alleged misbehavior and passing such interlocutory or interim order as may be deemed necessary in the way of administration and in the interest of justice.”

In pursuance to the aforesaid order, vide memo no. 1206 dated 4.11.2016, the order of transfer passed against Shib Nath Rudra was canceled but, the Joint Secretary vide Memo No. 1264 dated 29.11.2016 again transferred Shib Nath Rudra on administrative ground to the office of the Executive Engineer, Jamania Pump Canal Division, Mohania (Kaimur) which was communicated to the petitioner for relieve. The petitioner instead of releasing Shib Nath Rudra, wrote a letter vide letter no. 525 dated 5.12.2016 to the Superintending Engineer of the Circle requesting to allow Shib Nath Rudra to continue in office as important work sponsored by the Work Bank was going on and was doing the work perfectly, so, he ought to be allowed there till



completion of the work otherwise, will create problem and, thereby, he did not relieve Shib Nath Rudra whereupon the Government has taken it very seriously, vide order dated 24.1.2017, a show-cause notice was issued to the petitioner as to why a disciplinary action be not taken against him for not relieving Shib Nath Rudra who was transferred on 29.11.2016 and the explanation should be received within a period of one week.

Learned counsel for the petitioner submits that just thereafter, vide letter dated 25.1.2017, the petitioner has filed explanation addressed to the Joint Secretary, Government of Bihar, Water Resources Department. The petitioner again through his reply requested to allow Shib Nath Rudra to continue on the said post. The letter was sent through the registered post which is clear from the receipt attached with the reply to the counter affidavit filed by the petitioner (Annexure-15) which itself shows that explanation was sent through registered post in the name of Sri Shyamnandan Jha, Joint Secretary, Water Resources Department but, in utter surprise, the punishment has been awarded to the petitioner vide Memo No. 547 dated 19.4.2017 in which it has been mentioned that the petitioner failed to file explanation, led to inflicting punishment of censure for the year 2016-17 and stoppage of one increment with non-cumulative effect but, the



petitioner challenged the same in review application showing that he has filed the explanation to the show-cause which has been received but, it appears that the Reviewing Authority, without considering context of the review application, rejected the same vide notification no. 1996 dated 13.11.2017 reiterated the same thing and affirmed the order of punishment and, later on, the benefit of promotion granted to the petitioner has been canceled vide Memo No. 1733 dated 23.6.2017 (Annexure-14) which is under challenge.

The question in the present case is that it is apparently clear that after the show-cause, the petitioner has sent explanation on the next day itself that too through registered post but, the Joint Secretary, while passing the impugned order, failed to take into consideration the explanation filed by the petitioner.

So far the withdrawal of promotion is concerned, learned counsel for the petitioner submits that the withdrawal cannot be effected even on merit as Section 14(1) of the Bihar Govt. Servants (C.C.A.) Rules, 2005 discuss with the manner the penalty of censure but its Explanation-2 deals with in what manner the censure would operate in the event it remains sustained. Explanation-2 of Section 14(1) reads as follows:-



“EXPLANATION (2)- The penalties mentioned in the clauses (i),(ii),(iv),(v),(vi), (vii) and (viii) are explained as follows within the meaning of this rule-

(i)Censure.-The Censure shall be entered in the character roll of the year the allegation or omission & commission. The adverse effect of censure on the confirmation and promotion of concerned Government Servant shall be for next three consecutive years after the year of allegation or omission & commission for which he or she is censured. For example, if a Government Servant is censured for the allegation or omission & commission of the year 2002-2003, it shall be entered in the character roll of 2002-2003 and its adverse effect shall be from the year 2003-2004 to 2005-2006.

Such Government Servant who has been awarded with three censures, shall be deemed to be fit for promotion only if after expiry of the period of adverse effect of last (third) censure, during the next five years his work and conduct of at least three years is extraordinary and has not been awarded any adverse remarks for the period of next five years. For example, if the adverse effect of third censure of a Government servant expires in 2002 and his promotion is due in 2008 or before that, in that case his promotion shall be deemed to be due in 2008, i.e. five years after the expiry of adverse effects of last censure, with the condition that during the five years of 2003 to 2007 his work and conduct of at least three years is extraordinary and during the said five years he has not been awarded any adverse remarks.”

The example itself shows that if the allegation or omission and commission is related to the year 2003-04, it shall be entered into the character roll of 2002-03 and its adverse effect shall be from the year 2003-04 to 2005-06. So, he has submitted



that there may be entry of adverse report but all cause of action has taken effect after due promotion as Executive Engineer and it will operate on next three consecutive years after censure is recorded in the character roll.

In the present case, promotion was granted to the petitioner on 6.7.2016 whereas Shib Nath Rudra was first transferred by 17.8.2016 which ultimately was canceled and, finally, he was again transferred to the same place vide letter dated 29.11.2016. So, all the incident of transfer of Shib Nath Rudra has already happened after the order of promotion to the petitioner and, as such, it cannot affect the promotion given to the petitioner. He can only be punished by way of Executive Engineer and that will not effect the grant of promotion to the petitioner as Executive Engineer.

This Court is not giving any opinion the merit of the case but, the authority, before passing the order, was required to consider the plea taken in the explanation. In that view of the matter, the order suffers from illegality. Accordingly, the order of punishment contained in Memo No. 547 dated 10.4.2017 (Annexure-11) and order contained in Memo No. 1733 dated 23.6.2017 (Annexure-14) are quashed. As a consequence, the order contained in Memo No. 1996 dated 13.11.2017 (Annexure-



A) rejecting the review application is also quashed. The matter is remanded back for fresh consideration.

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

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.08.2019
Transmission Date	

