

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8134 of 2020

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Brahmanand Paswan Son of Bajrangi Paswan Resident of Village- Gahana,
P.O.- Haspura, P.S.- Haspura, District- Aurangabad. Pin- 824120.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in- Chief Road Construction Department, Government of Bihar, Patna.
4. The Chief Engineer Traffic (North Bihar)- Cum- Conducting Officer
5. The Deputy Secretary (Vigilance) Road Construction Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar
	:	Mr.Yogesh Kumar
	:	Mr.Ayush Kumar
For the Respondent/s	:	Mr.Sayed Iqbal Ahmad (SC 20)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 26-03-2021 The petitioner, while posted as Junior Engineer in the Road Construction Department, Government of Bihar, was placed under Suspension by an order dated 20.12.2018 issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna under Rule 9(1) (a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, in contemplation of a departmental proceeding. The petitioner has put to challenge the said order of suspension dated 20.12.2018



which is still continuing.

I have heard learned counsel appearing on behalf of the petitioner and learned counsel representing the State of Bihar. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the State of Bihar. A reply has been filed by the petitioner to the counter affidavit filed on behalf of the respondents.

There is no dispute qua the fact that the enquiring authority had submitted his report more than a year back on 10.02.2020 after conclusion of the enquiry, with the findings that the charges against the petitioner could not be established. As no decision was being taken by the disciplinary authority on the report of the enquiring authority, the petitioner approached this Court by filing present writ application on 14.09.2020, which was registered on 25.09.2020. Apparently after filing of the writ application, the disciplinary authority issued an order dated 22.10.2020, recording his notes of disagreement with the finding recorded by the enquiring authority in his report and asking the petitioner to submit his reply. This is also not in dispute that the petitioner has responded to the said notes of disagreement and has submitted his explanation before the disciplinary authority to satisfy him that the findings recorded



by the enquiring authority are correct. No decision has, however, been taken by the disciplinary authority thereafter.

In the supplementary counter affidavit filed on behalf of the State of Bihar, it has been stated that a disciplinary proceeding is pending against the petitioner's then controlling officer i.e. Executive Engineer Sri Sunil Kumar Suman in respect of the same transaction which had given rise to the disciplinary proceeding initiated against the petitioner. It has been averred in the supplementary affidavit that the disciplinary authority of the petitioner has decided to examine the petitioner's reply to the notes of disagreement after conclusion of the said disciplinary proceeding against the executive engineer. It has been stated that there is delay only because of the pendency of the disciplinary proceeding against the Executive Engineer. The respondents have apparently not disclosed any tentative time by which final order can be passed in the disciplinary proceeding against the petitioner on the basis of petitioner's explanation in response to the notes of disagreement issued in this case. As has been noticed above, according to the disciplinary authority, decision on the present disciplinary proceeding can be taken depending on the outcome of the disciplinary proceeding against the Executive Engineer.



This Court fails to appreciate such approach of the disciplinary authority which has to apparently act strictly in accordance with the procedure prescribed under the Rules on the basis of materials available in the departmental proceeding against the petitioner.

Considering the facts and circumstances of the case, as noted above, since the petitioner's disciplinary authority has refused to pass any order in the present proceeding despite conclusion of enquiry and submission of enquiry report, in my opinion, continuance of order of suspension can have no justification. This application is accordingly allowed.

For the reasons noted above, the order of suspension, thus, shall be treated to have become inoperative from today. Consequence shall follow, accordingly.

(Chakradhari Sharan Singh, J)

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