

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16035 of 2018

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Arun Kumar Singh, son of Late Ramchandra Singh, resident of Village-
Manpur Ratnawali, P.S. Runnisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar,
3. The Special Land Acquisition Officer, Sone Yojna, District- Aurangabad.
4. The Chief Engineer, Flood Control and Water Discharge, Water Resource Department, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Choudhary, Sr. Advocate Mr.Akshansh Ankit, Advocate
For the Respondent/s	:	Mr.Binod Kumar Sinha, AC to Ex.GP8

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 21-11-2022

The writ petitioner has sought the following relief/s:-

- a. For quashing Memo No. 40 dated 08.05.2018 issued by the Respondent No.2 whereby and whereunder the earlier order of punishment as contained in Office Order 86 dated 11.08.2017 was upheld and the Petitioner was terminated from service without following the settled norms and Principles of law as well as in gross violation of Statutory Rules.
- b. For a direction upon the Respondents to



reinstate the Petitioner and give all consequential benefits including continuity in service and back wages.

c. To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.

2. Heard Mr. Ashok Kumar Choudhary, learned senior counsel for the petitioner, as well as Mr. Binod Kumar Sinha, learned counsel for the State.

3. The petitioner was posted as “Mapak” in the Special Land Acquisition Office, Gandak Project, Muzaffarpur, during 2008 to 2014. Some lands were acquired for construction of Bagmati embankment. A Committee of three officers, constituted by the Department, enquired into the records of the land acquisition proceedings to find that illegal payment of an amount of Rs.7,95,21,644/- was paid to the Raiyats fraudulently, by committing forgery and manipulation in some records of some land acquisition cases. The petitioner was involved in facilitating the illegal payments. On the basis of the enquiry report the petitioner was served with an explanation. He did not respond to the



explanation inspite of reminders.

4. Under Office order dated 06.05.2016 he was placed under suspension and it was decided to initiate departmental proceedings against him. Proceedings were initiated under charge memo dated 15.12.2016. He was directed to submit his written statement of defence and was allowed to inspect the records/documents in the Special Land Acquisition Office. After the proceedings, enquiry report was submitted by the Enquiry Officer on 03.07.2017, finding that the petitioner was involved in causing financial loss of Rs.11,72,522/- by facilitating illegal payments. After serving a second show cause notice on the petitioner and his reply thereto, the petitioner was dismissed vide Office order dated 11.08.2017 issued by the Additional Secretary-cum-Director, Land acquisition and Rehabilitation in the Water Resource Department, Government of Bihar.

5. The petitioner preferred an appeal against the dismissal. The Appellate Authority under order dated 23.03.2018 passed an order, which reads as follows:-

"अपीलार्थी उपस्थित । इस अपील
आवेदन को निदेशक , भू-अर्जन -सह -
अनुशासनिक प्राधिकार को इस निदेश के साथ



सम्प्रेषित किया जाता है कि अपीलार्थी को आरोपों की एक सुस्पष्ट प्रति का तामिला कराते हुए तथा आरोपों से संगत अभिलेख के अवलोकन का अवसर प्रदान करते हुए उनके प्रतिपक्ष का विचारण कर आदेश पारित करें।

उक्त प्रतिप्रेषण से मूल दण्डादेश प्रभावी नहीं होगा और वह पूर्ववत् प्रभावी रहेगा।

अपीलार्थी की तरफ से यह बिन्दु भी उठाया गया कि बर्खास्तगी के पूर्व निलंबन अवधि में इन्हें जीवन निर्वाह भत्ता का भी भुगतान नहीं हुआ था। इनके जीवन निर्वाह भत्ता के बारे में विचार करते हुए निदेशक, भू-अर्जन सह अनुशासनिक प्राधिकार एक स्वव्याख्यात्मक आदेश पारित करें।"

6. Upon remand, the Disciplinary Authority vide letter dated 26.03.2018 directed the petitioner to receive the related documents from the Office, reminders were also sent. Petitioner, however, did not adduce any evidence or appear before the Disciplinary Authority.

7. He had submitted a representation requesting for grant of more time. The representation was



rejected and the punishment of dismissal, earlier awarded to the petitioner on 11.08.2017, was maintained as per order dated 08.05.2018 passed by the Disciplinary Authority. It is this order which is put to challenge in the instant proceedings.

8. Learned senior counsel submits that the petitioner's prayer for time on grounds of his son's illness has been rejected and the earlier punishment of dismissal has also been maintained by the impugned order dated 08.05.2018. The order is, therefore, a composite order dealing with two issues. The petitioner had placed adequate material in support of his claim for being granted sometime. The same, however, has not been considered and has been rejected by the Disciplinary Authority with a premeditated mind to uphold and reiterate the earlier order of punishment dated 11.08.2017.

9. Learned counsel for the State on the other hand submits that the petitioner was allowed adequate opportunity. The Disciplinary Authority has found the petitioner's plea regarding treatment of his son in Ranchi was nothing but a dilatory tactics. Since the petitioner chose not to avail the opportunity and only resorted to dilatory



tactics, the Disciplinary Authority was left with no option but to reiterate the earlier order of dismissal.

10. Having considered the rival submissions and the materials on record, this Court would find that when the matter was remanded by the Appellate Authority under order dated 23.03.2018, the Disciplinary Authority had allowed the petitioner opportunity, as contemplated by the order of the Appellate Authority. The petitioner, however, has sought time on a plea that his son was undergoing treatment for some mental disorder at Central Institute of Psychiatry, Ranchi. The petitioner has also enclosed copy of discharge summary and prescriptions. The Disciplinary Authority, therefore, was under a legal obligation to consider the petitioner's representation for time dated 07.05.2018, since till that date the consideration by the Disciplinary Authority on remand had not commenced. Instead of considering the petitioner's request and passing orders thereupon, the Disciplinary Authority has proceeded to reject the same and reiterate the order of dismissal dated 11.08.2017 by a composite order dated 08.05.2018. Such composite order is unsustainable. If the petitioner had been communicated rejection of his request for adjournment or



time, he would have been conscious of the fact that he was not being allowed any more time and would have allowed him opportunity to take any step possible in the circumstances. But that has not been done. The petitioner, therefore, was not knowing that his request for adjournment was rejected and, therefore, he cannot be blamed for not taking any steps after he had submitted his representation dated 07.05.2018.

11. Another aspect of the matter is that, from bare perusal of the representation dated 07.05.2018 and the copies of prescription and discharge summary enclosed therewith, it is apparent that the petitioner's son was admitted at the Central Institute of Psychiatry, Ranchi, from 31.03.2018 to 01.05.2018. The petitioner's son, therefore, appears to have been admitted at the Institute merely four days after he had been served with notice dated 26.03.2018 by the Disciplinary Authority, upon remand. Immediately after he has been discharged on 01.05.2018 at Ranchi, the petitioner made his application for adjournment on 07.05.2018, so as to enable him some time to make out his defence and to inspect the documents, obtain copies of the same from the Office of the Land Acquisition Office and



effectively defend himself. The petitioner has sought one month's time. Whether he was entitled to such a long adjournment or not is an issue which the Disciplinary Authority was required to consider and communicate to the petitioner by a reasoned order, which has not been done. It is apparent from the petitioner's representation seeking adjournment that the plea of his son's illness was supported by documents which required consideration by a speaking order under due intimation to the petitioner before proceeding further in the matter.

12. The same having not been done, this Court would find that the impugned composite order dated 08.05.2018 is unsustainable for the reasons noted above. The matter, therefore, is required to be remitted to the Disciplinary Authority in terms of Appellate Authority's order dated 23.03.2018.

13. When the matter was taken up on the last occasion, it was adjourned to enable learned counsel for the State to inform this Court that after dissolution of the Directorate, which Authority is the petitioner's disciplinary authority. Learned counsel for the State has sought instructions and as per letter dated 08.11.2022 bearing memo



no.4521 from the office of the Joint Secretary in the Water Resource Department, Government of Bihar, copy of which has been handed over to the Court for the records, it is apparent that the petitioner's Disciplinary Authority is now the Chief Engineer, Flood Control and Water Discharge, Water Resource Department, Muzaffarpur.

14. In view of this development, the Chief Engineer is being impleaded as a party respondent to the instant writ proceedings and the matter is being remitted to the newly added Respondent No.4, in terms of Appellate Authority's order dated 23.03.2018, and for proceeding further as per the said order.

15. Writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2022
Transmission Date	NA

