

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1102 of 2022

In
Civil Writ Jurisdiction Case No.5877 of 2020

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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/s

Versus

1. The State of Bihar
2. Sri Pratayay Amrit, the Additional Chief Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey, Road, Patna.
3. Sri Dipesh Kumar, The Deputy Secretary (Management Cell), Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Advocate
For the Opposite Party/s : Mr. Syed Iqbal Ahmad, SC 20

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

4 17-08-2022 Heard learned counsels for the parties.

2. The present contempt petition is filed for non compliance of the order dated 13.12.2021 passed in C.W.J.C. No. 5877 of 2020. The concerned respondent was directed as under:

“The concerned respondent is hereby directed to take note of the grievance as to whether the petitioner is eligible for promotion to the post of Chief Engineer at par with his immediate junior Shri Raj Kumar Lal w.e.f. 04.08.2014. The aforesaid decision shall be taken while passing a speaking order. If the petitioner is otherwise eligible, he shall be promoted w.e.f. 04.08.2014 from the date his immediate junior Shri Raj Kumar Lal was promoted. If he is not eligible,



speaking order shall be passed as to why the petitioner is not eligible to be promoted to the post of Chief Engineer in Road Construction Department w.e.f. 04.08.2014. The above exercise shall be completed within a period of one month from the date of receipt of this order.

The writ petition stands disposed of.”

3. Respondents have filed show cause along with speaking order dated 27.05.2022 in which it is highlighted by the concerned respondent/promoting authority to the post of Chief Engineer that petitioner/complainant was subjected to disciplinary proceedings in framing of article of charges on 11.06.2014 whereas Shri. Raj Kumar Lal who is stated to be junior to the petitioner was promoted to the post of Chief Engineer on 04.08.2014. Obviously petitioner name is stated to have been ignored due to pendency of disciplinary proceedings, disciplinary proceedings were concluded in imposition of penalty on 15.05.2015 and it was subject matter of C.W.J.C. No. 803 of 2016 which was decided on 04.01.2019. Extract of the order reads as under:

“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



16.01.2018. 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.”

4. Learned counsel for the petitioner vehemently submitted that once the order of penalty is set aside, in that event petitioner is entitled to be promoted to the post of Chief Engineer on 04.08.2014. The same cannot be appreciated for the reasons that matter relating to inquiry has been remanded to the disciplinary authority to complete the inquiry from the defective stage in particularly issuance of second show cause notice to the petitioner. Therefore, it is a *prima facie* case that petitioner was facing departmental inquiry.

5. At this stage, learned counsel for the respondent pointed out that on remand by this Court the disciplinary



proceedings has attained finality in imposition of penalty of withholding of one increment with cumulative effect on 06.08.2021. In the light of these development, petitioner is not entitled to promotion to the post of Chief Engineer as long as penalty order dated 06.08.2021 is set aside by competent forum.

6. Accordingly, M.J.C. No. 1102 of 2022 arising out of C.W.J.C. No. 5877 of 2020 stands dropped.

(P. B. Bajanthri, J)

GAURAV S./-

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