

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2598 of 2021

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Amlesh Kumar, Son of Late Bhola Prasad Sahu, Resident of Mohalla-C-3017, Opposite Shiv Temple, P.S.- Rajeev Nagar, Keshari Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna.
4. The Special Secretary, Road Construction Department, Bihar, Patna.
5. The Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr.Prabhu Nath Pathak, Advocate
For the State : Mr.Md. Zeeshan Kalim, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-11-2022

The writ application has been filed being aggrieved by the order of punishment dated 20.09.2018 by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna withholding two annual increments without cumulative effect. The petitioner's appeal against the said order has been rejected. The order of rejection, under communication dated 03.12.2019 vide Memo No.10401(S), by the Special Secretary of the Department is also impugned in the instant writ proceedings.



2. The petitioner at the relevant time was posted as Junior Engineer in the Road Section, Sahpur under Sahabad Road Division at Ara in the Road Construction Department. On 25.12.2012, the Executive Engineer, Flying Squad No.4 of the Department inspected the newly constructed PCC road from Sapna Cinema to Katira More under Sahabad Division. He found some defects in the construction, touching upon the quality of the work executed. Inspection report dated 26.12.2012 was submitted, leading to initiation of departmental proceedings against the Executive Engineer, Assistant Engineer as well as the petitioner under different Notifications/Orders dated 14.06.2013.

3. Charge memo issued against the petitioner was dated 10.06.2013. The same was issued on *Prapatra- 'K'*. The list of evidence contained inspection reports. Petitioner filed his show cause and thereafter an enquiry report dated 13.04.2017 was submitted, under communication dated 13.04.2017, by the Chief Engineer, South Bihar (Communication) to the Engineer-in-Chief-cum-Additional Commissioner exonerating the petitioner from the charges.

4. The Engineer-in-Chief gave a second show cause notice to the petitioner on 08.05.2017. In the second show cause notice, the Engineer-in-Chief has differed with the findings of the



Chief Engineer on all the four charges. The petitioner submitted his reply to the second show cause notice, in detail, dealing with all the four specific charges.

5. It is not in dispute that the petitioner's response to the second show cause notice was referred to a Departmental Technical Committee, headed by the Engineer-in-Chief, Road Construction Department and comprising four Chief Engineers, one Officer-on-Special Duty (Technical) and Director, Training, Test and Research. This Technical Committee, after a meticulous consideration of the charges, petitioner's reply and the technical aspects of the matter, by an elaborate enquiry report into the quality of the works, found the four charges not to be proved.

6. Contrary to all expectations, the disciplinary authority has held the charges proved ignoring the two concurrent findings regarding the same not being proved by the enquiry officer as per enquiry report dated 13.04.2017 as well as the detailed enquiry report into the quality of the works executed by the Departmental Technical Committee.

7. Learned counsel for the petitioner submits that though the petitioner's reply to the second show cause was forwarded to the Departmental Technical Committee for consideration, which led to a thorough consideration of the issue



with reference to all technical aspects of the Departmental Technical Committee comprising several Experts, noted above, the report of the Departmental Technical Committee has not been considered by the Engineer-in-Chief while passing the impugned order dated 20.09.2018 as disciplinary authority. The entire exercise by the Departmental Technical Committee and elaborate report dealing with all technical aspects of the matter have been brushed aside by the disciplinary authority by a cryptic consideration in the impugned order of punishment, which manifests non-application of mind.

8. The order of punishment is also bad for the reason that the charges have not been held proved by the disciplinary authority with reference to any evidence on record in support of the charge.

9. With respect to Charge No.01 that the joints of the PCC road was not found correct at some places, the disciplinary authority has relied upon a letter dated 09.10.2012 issued by the District Magistrate, Ara, which letter was not in the list of evidence in the charge memo, based on which the enquiry was held. The finding based upon a letter, which was not on record, is unsustainable, being contrary to the requirement of Rule 18(2) of



the Bihar Civil Services (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules').

10. With respect to second charge regarding the average thickness of the PCC road being 281 Millimetres instead of 300 Millimetres, the petitioner's specific case was that the deficiency was only in a particular Section of the completed PCC road. For the said Section at 570.00 metres, the works executed by the Contractor for this portion had been rejected by the petitioner while making entries in the measurement book and no payment was made for the Section. It has also been stated that for the rest of the PCC road, the average thickness of the PCC work was 10.5 Millimetres 7.50 Millimetres in excess of the required 300 Millimetres thickness.

11. Such plea of the petitioner, which was accepted by the enquiry officer as well as the Departmental Technical Committee, has been rejected by the disciplinary authority, without assigning any reasons with reference to any material on record. The disciplinary authority has surmised that the petitioner's stand is not sustainable, without any reference to any material on record.

12. The findings of the disciplinary authority on the third charge and fourth charge regarding deficiency in



compressive strength and ratio of mixture of cement, sand and chips is also on similar lines without reference to any material on record. The findings therefore are clearly unsustainable being contrary to the requirement of Rule 18(2) of the Bihar CCA Rules, which reads as follows:

"18(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose."

13. The State Counsel submits that after submitting a charge memo, the enquiry has been conducted as per the procedure prescribed under the Bihar CCA Rules. There being no procedural infirmity, this Court should not interfere with the order of punishment. It is also submitted that the petitioner has been visited with a minor punishment, which is commensurate to the gravity of the charges and therefore the order is sustainable in law and requires no interference.

14. The Court is in agreement with the submissions of the petitioner's counsel as the same is correct from perusal of the enquiry report, report of the Departmental Technical Committee



and the impugned order of punishment of the disciplinary authority. The order of punishment does not reply upon any evidence adduced in the course of enquiry. It also does not assign any reasons for not concurring with the enquiry report, or the report of the Departmental Technical Committee. The order thus suffers from a fatal procedural infirmity, being in violation of Rule 18(2) of the Bihar CCA Rules. In so far as non-assigning of reasons, this Court would observe that non-assigning of reasons has repeatedly been frowned upon by several judgments. The requirement of assigning reasons has been reiterated time and again. The Apex Court in the case of ***Kranti Associates Private Ltd. & Anr. Vs. Masood Ahmad Khan & Ors., reported in (2010) 9 SCC 49***, has stated the law in so far as requirement of recording of reasons to ensure fairness as well as judicial scrutiny, as it is only if reasons are assigned that the Court can consider the impugned order of the authority to arrive at the conclusion.

15. The order dated 20.09.2018 imposing punishment is therefore clearly unsustainable and is hereby quashed.

16. The order of the appellate authority being in affirmation of the findings of the disciplinary authority, which are illegal being contrary to the requirement of Rule 18(2) of the



Bihar CCA Rules; as also for non-assigning of reasons, is also quashed.

17. Writ application is allowed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

