

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6248 of 2021

Awadhesh Kumar Tiwari, son of late Gauri Shankar Tiwari, Resident of
village - Allapur, Police Station- Manjhagarh, District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Building Construction Department, the Government of Bihar, Vishweshraiya Bhawan, Patna.
3. The Joint Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
4. The Joint Secretary cum Officer on Special Duty cum Chief Vigilance Officer, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
5. The Deputy Secretary, Building construction Department, Government of Bihar, Patna.
6. The Additional Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
7. The Under Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rabi Bhushan Prasad No. 1, Advocate
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate
For the State	:	Mr. Jitendra Kumar, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 19-09-2023

Heard Mr. Rabi Bhushan Prasad, learned counsel
appearing on behalf of the petitioner, Mrs. Nivedita Nirvikar,
learned Senior Counsel appearing on behalf of the Accountant
General and Mr. Jitendra Kumar, learned AC to AAG-9
appearing for the State.

2. In the present writ petition, the petitioner has



prayed for following reliefs:

“1. That by way of filing the present writ petition the petitioner seeks indulgence of this Hon'ble Court for issuance of writ in the nature of certiorari for quashing of the Letter No. 9182 (Bh) dated 16.10.2019 (Annexure-3) issued under the signature of Indubala, Under Secretary, Building Construction Department, Government of Bihar, Patna whereby and where under 5 % deduction from pension of the petitioner for a period of one year as punishment has been made in connection with Departmental Proceeding initiated against the petitioner during service in the year 2015.

Further the petitioner has prayed for quashing of the impugned part of the consequential order contained in letter No. 9848 dated 11.11.2019 (Annexure-3/1), issued under the signature of Chandrashekhar Prasad Singh, Deputy Secretary, Building Construction Department, Government of Bihar, Patna by which the Departmental Proceeding initiated against the petitioner has been converted under Rule 43b of the Bihar Pension Rules, 1950 after retirement on 31.03.2018.

For issuance of direction to the Respondent authorities to return back the entire amount deducted from the pension of the petitioner for one year in light of order contained in Annexure- 3 and 3/1 by setting aside the order of punishment in form of 5% deduction from pension of the petitioner.

For issuance of any other



order/s, direction/s, writ/s which is deemed to be fit and proper in the facts and circumstances of the case in the interest of justice and the petitioner is found entitled to.”

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner was holding dual charge as Executive Engineer, Building Division, Sitamarhi and additional charge of Executive Engineer, Building Division, Sheohar. Departmental proceeding was initiated against the petitioner vide Memo No. 854(Bh.) dated 22.01.2015, issued by Joint Secretary cum Officer on Special Duty cum Chief Vigilance Officer, Building Construction Department, Bihar, Patna (Annexure 1) on the basis of charges levelled in *Prapatr K* by DM, Sitamarhi under Rule 17 of Bihar Government Servants(Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the “C.C.A Rules, 2005”). Pursuant to the initiation of departmental proceeding, petitioner filed show cause on 30.07.2015 to Chief Engineer(Design), cum Enquiry Officer, stating inter alia, that the delay in reaching Sitamarhi at the specified time assigned by DM, Sitamarhi on 30.03.2014 was attributable to the distance of 34 Km between Sheohar and Sitamarhi. Subsequently, an inquiry report was submitted on 31.07.2015, vide Letter No. 1063 dated 31.07.2015, and the



Inquiry Officer found that none of the charges as levelled against the petitioner in *Prapatr K* were proved. Nonetheless, the departmental proceeding was sustained against the petitioner for indecent use of language in his reply to show cause filed to the Deputy Secretary, Building Construction Department, Bihar, Patna vide Letter dated 27.05.2014 (Annexure 2). Order for extension of departmental proceeding was issued by resolution dated 24.10.2016, i.e after more than one year and three months from the date the enquiry report was submitted (i.e on 31.07.2015). Thereafter, Order imposing 5% deduction from pension for one year was passed vide Letter No.9182 dated 16.10.2019 (Annexure 3) and by Order contained in Letter No. 9848 dated 11.11.2019, the departmental proceeding was to proceed under Rule 43(b) of the Bihar Pension Rules, 1950, against the petitioner on the very date of his retirement i.e 31.03.2018.

4. Learned counsel submits that there is no link as to in what manner the petitioner was served the Notice under Rule 43(b) of the Bihar Pension Rules, 1950 as there is no document on the record to show that the petitioner was served with any notice or the disciplinary authority has differed with the inquiry report, which was submitted in the year, 2015. On



these grounds, learned counsel submitted that the penalty order passed in Memo No. 9848, dated 11.11.2019 and consequential order as contained in Memo No. 9182, dated 16.10.2019, whereby the punishment for deduction of 5% from the pension of the petitioner for a period of one year was imposed is without jurisdiction as the Authority has not taken into consideration the provision of C.C.A Rules, 2005 and had proceeded on his own to impose the penalty order taking aid of Rule 43(b) of the Bihar Pension Rules, 1950. On these grounds, learned counsel submits that the penalty order as well as the consequential order is fit to be set aside and for this reliance can also be placed upon the case of ***Ram Dayal Rai v. The Jharkhand State Electricity Board and ors.***, reported in ***(2005) 3 SCC page 501***.

5. Learned counsel further submits that the disciplinary authority has proceeded on the opinion of the Collector of the District and as such directory order having been passed on the opinion of the Collector, without application of mind, is not in accordance with law.

6. *Per Contra*, learned counsel appearing on behalf of the State submits that disciplinary authority has considered the inquiry report submitted vide Letter No. 3163 dated 31.07.2015 to the Chief Engineer, Design, wherein charges



levelled against the petitioner were held to be not proved and after much deliberation and discussion, it was decided to disagree with the findings of the Inquiry Officer and, thereafter, departmental proceedings were extended under rule 18(2) of Bihar CCA Rules, 2005, vide Memo No. 10380 dated 24.10.2016, issued by Joint Secretary of the Building Construction Department, Government of Bihar (Annexure C). During the second inquiry, the Department sought record/documents from DM, Sitamarhi vide letter No.10322 dated 01.10.2018, Letter No.12436 dated 14.12.2018 and Letter No.68 dated 03.01.2019. The Chief Engineer(Design) cum Conducting Officer, BCD, Bihar submitted opinion vide Memo No. 191 dated 01.02.2019, whereby Charge No. 1,2 and 3 were held to be not proved while Charge No. 4 (indecent use of language) was proved against the petitioner (Annexure E). Thereafter, second show cause notice was issued by Dy. Secretary being the Disciplinary Authority vide letter No. 4340, dated 08.05.2019 as contained in Annexure-F, seeking petitioner's explanation on proposed punishment of 5% deduction from his pension for one year. Reply to the second show cause was received from petitioner on 28.05.2019 vide his Letter dated 24.05.2019. Subsequently, deduction of 5% of



pension of the petitioner for one year was imposed upon the petitioner vide Notification No.9182 dated 16.10.2019, after receiving approval from the Bihar Public Service Commission vide its Letter No.1579 dated 26.09.2019 (Annexure H) and the same was communicated to the petitioner. On these grounds, the learned State counsel submits that there are no procedural lapses and violation of principle of natural justice in the conduct of the disciplinary proceeding and in the order of penalty, which has been imposed upon the petitioner is in conformity with the charge levelled against him. The petitioner has never objected to the quantum of punishment imposed on him.

7. Having considered the rival submissions made on behalf of the parties as well as the fact that a proper disciplinary proceeding was initiated against the petitioner. The petitioner was given due opportunity in accordance with the Bihar C.C.A Rules, 2005. Before imposing the penalty upon the petitioner, the disciplinary authority has taken opinion from the Bihar Public Service Commission and after taking approval of the Bihar Public Service Commission, the disciplinary authority had proceeded to impose penalty by deducting amount at the rate of 5% from the monthly pension of the petitioner for a period of one year. I am of the opinion that petitioner has not



been able to make out his case as to in what manner, this Court is required to interfere with the order passed by the disciplinary authority in judicial review.

8. The Apex Court in the case of ***B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80: (1996) 32 ATC 44]***, has discussed the scope of judicial review wherein it has observed stating that review by the Court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot reappreciate the evidence and substitute its own finding. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court.

“The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718: AIR 1964 SC 364], this Court held at p. 728 that if the conclusion, upon considering of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”



9. In view of the aforesaid discussions, this court does not find any illegality in the impugned order of the disciplinary authority by imposing penalty upon the petitioner.

10. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Manish/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	27.09.2023
Transmission Date	N/A

