

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4380 of 2023

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Shambhu Prasad S/o Late Devi Lal, Resident of 3E Sakaar Palm Greens Apt,
Mainpura Danapur Nizamat, Vaishali Gas agency, Saguna More, P.O. and
P.S.- Danapur, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Govt. of Bihar, Patna.
5. The Chief Engineer, Flood control and Water Drainage, Water Resources Department, Katihar.
6. The Chief Engineer, Central Design and Research Anisabad, Patna.
7. The Superintending Engineer, Western Kosi Canal Circle, Darbhanga.
8. The Accountant General Bihar, Birchand Patel Path, Patna.
9. The Treasury Officer, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Ranjan, Adv

For the Respondent : Dr.Anand Kumar, Adv

Mr.Ramesh Gupta, Adv

For the State : Mr.Anjani Kumar (AAG 4)



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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 16-08-2023

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent.

2. The petitioner while he was posted as an Assistant Engineer in Bagamati Sub-Division of the Water Resource Department at Sehoar was responsible for having constructed a single lane bridge over the canal. It is not in dispute that the work in question was executed in the financial year 2005-2006. A charge memo has been served on the petitioner by a resolution dated 18.02.2016 (Annexure 4), about 10 years after the works was executed. The allegation in the charge memo as contained on "*Praptra K*" is that the central line of the single lane bridge which was got constructed by the petitioner was at a variance with the central line of the canal by a distance of 49 feet 6 inches. It is stated that such construction was rendered useless and therefore subsequently another single lane bridge was required to be constructed which has occasioned financial loss to the department.

3. The petitioner's response to the charge memo



was that since land acquisition process was pending and there was stiff resistance from the general public in construction at the place in conformity with the central line of the canal, the higher officials had taken a decision to get another central line determined by the *Amin*. The *Amin* had determined a second central line for the construction in- question and the construction was carried out on the subsequently determined central line.

4. The Enquiry Officer has held the charges not to be proved in the inquiry report submitted by him on 16.04.2016 (Annexure 6). The inquiry report takes note of the stand of the petitioner which has been accepted. From perusal of the inquiry report, it is apparent that not a single witness was called to depose in support of the charges against the petitioner nor any material whatsoever has been placed before the Enquiry Officer in support of the charge. The manner, in which the proceedings were conducted, shows that there was no material whatsoever in support of the charge.

5. The fact that the allegations were not supported by any material is one aspect of the matter; the other being the petitioner's plea, as noted above regarding construction on subsequently determined central line.



6. The disciplinary authority has proceeded to differ with the findings of the Enquiry Officer and issued a second show cause notice in purported exercise of power under Rule 18 (2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short "Bihar (CCA) Rules, 2005"). The petitioner has responded thereto, which has not been accepted and the disciplinary authority has proceeded to award the petitioner two punishments notified on 27.04.2018 (Annexure 9). The first punishment was withholding of three annual increments with cumulative effect and second for recovering the amount spent over construction of the single lane bridge (Rs. 1,99,788/-) from the petitioner.

7. The petitioner has availed remedy under Rule 24 (2) of the Bihar (CCA) Rules, 2005 by filing a revision by way of Memorial. The same has been rejected by the department on 16.09.2020 (Annexure 11). In view of rejection of the petitioner's review by way of memorial, the authorities have come out with an order consequential to the order of punishment for its implementation on 26.10.2022 (Annexure 13).

8. The office order for recovering the amount of Rs. 1,99,788/- dated 13.01.2023 (Annexure 15), has also has been issued.



9. It is submitted by the learned counsel for the petitioner that the petitioner has been proceeded against for stale charges, a decade after its alleged commission. The same is founded on a complaint made by a local peoples' representative. In view of there being no material whatsoever in support of the charges, the Enquiry Officer had held that the charges were not proved. If at all, the disciplinary authority was to disagree with the findings which were required done in accordance with Rule 18 (2) Bihar (CCA) Rules, 2005 which has not been done.

10. In fact, the disciplinary authority, while differing with the findings of the Enquiry Officer, has not referred to or relied upon any material whatsoever produced in the course of inquiry. The second show cause notice, therefore, is in violation of rule 18 (2) of the Bihar (CCA) Rules, 2005. The resultant findings culminating in the notification of punishment dated 27.04.2018 (Annexure 9) is also unsustainable as it is not founded on any material whatsoever in support of the charge. In fact, the basis of the punishment appears to be the opinion of the disciplinary authority that the petitioner has not been able to establish his defence which is apparent from the order relevant extract of which is quoted hereinbelow:-



"संरचना के निर्माण कराने से संबंधित उच्चाधिकारियों द्वारा दिये गये निदेश तथा अमीनों द्वारा निर्धारित सेंटर लाईन पर ही संरचना का निर्माण कराया गया है, से संबंधित कोई साक्ष्य उपलब्ध नहीं कराया गया है। अतएव साक्ष्य के अभाव में श्री प्रसाद के कथन को स्वीकार नहीं किया जा सकता है। ऐसे भी नहर बन जाने के बाद ही संरचना का निर्माण किया जाना चाहिए था। ताकि, ऐसी स्थिति उत्पन्न नहीं होती।"

11. The entire proceeding is, therefore, unsustainable being based on stale charges and, as a result of a process *de hors* the procedural prescription contained in Bihar (CCA) Rules, 2005.

12. The review authority has also failed to consider this aspect of the matter and mechanically rejected the petitioner's review affirming the otherwise illegal order and is, therefore, unsustainable.

13. The consequential orders for giving effect to the punishment, therefore, are also required to be quashed.

14. Learned counsel for the State, on the other hand, has referred to the stand of the respondents as per order passed by the disciplinary authority as also the Reviewing Authority. He has opposed the writ petition by submitting that the proceedings were based on a duly constituted proceedings, by issuance of a charge memo, after due inquiry before the



Enquiry Officer and following the procedure prescribed in the Bihar (CCA) Rules, 2005. There is a proper second show cause notice differing with the finding of the Enquiry Officer; and a detailed order passed by the disciplinary authority taking note of the petitioner's defence. The orders, therefore, requires no interference.

15. On consideration of rival submission, this Court would find that the charge memo, apparently issued in respect of charges that are 10 years old was in respect of stale charges, and on this ground itself, the proceedings are liable to be interfered with.

16. The other aspect of the matter is non-conformity with the procedural prescription in the Bihar (CCA) Rules, 2005. It is apparent from the second show cause notice, issued by the disciplinary authority that the same is not founded on any material whatsoever. Rule 18 (2) Bihar (CCA) Rules, 2005, is clear in its intent that points of difference with findings of the Enquiry Officer can be recorded only if the disciplinary authority, based on material adduced during the course of inquiry finds that the issue has not been properly dealt with. There is no material whatsoever in the instant case. In fact, the disciplinary authority has issued the second show cause notice



by stating that there is no material on record to sustain the petitioner's defence that the decision to construct the single lane bridge on the freshly determined central line by an *Amin* was, as a result of decision taken by the higher authorities. In fact, disciplinary authority has gone one step further to record that construction of the single lane bridge was bad because the petitioner ought to have waited for the canal to be constructed before constructing the single lane bridge. However, there was no charge to this extent and the finding to this extent are without confronting the petitioner with any such charge and, therefore, clearly unsustainable on this ground also. Both, the second show cause notice and the order, extracted above, are without reference to any material adduced in the course of inquiry.

17. The notification of punishment dated 27.04.2018 (Annexure 9) is, therefore, unsustainable being a result of a procedure contrary to the procedural prescription in the Bihar (CCA) Rules, 2005. The order of punishment dated 27.04.2018 (Annexure 9) is, therefore quashed. The notification of affirmation of this illegal order by the revisional authority dated 16.09.2020 (Annexure 11) must, therefore, also collapse. The same is also quashed.

18. The consequential orders dated 26.10.2022



(Annexure 13); and office order dated 13.01.2023 (Annexure 15) for giving effect to the illegal order dated 26.10.222 (Annexure 13) are, thus, also now devoid of any substance and are quashed.

19. The writ petition is allowed. The petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

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CAV DATE	
Uploading Date	
Transmission Date	

