

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20860 of 2013

Sunil Kumar Gupta S/O Late Bishwanath Prasad Gupta Resident Of Village-
Barwa Bidyapath, P.S.- Maharajganj, District- Maharajganj, At Presently
Chandrakunj Bhawan, New Dak Bunglow Road, P.S.- Gandhi Maidan,
District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Chief Secretary, Bihar, Patna
3. The Secretary, Road Construction Department, Govt. Of Bihar, Patna
4. The Deputy Secretary, Road Construction Department, Govt. Of Bihar, Patna
5. The Dicipinary Authority-Cum-Engineer-In-Chief, Road Construction Department, Bihar, Patna
6. Sri Ashok Kumar Sinha, The Conducting Officer-Cum-Special Officer-Cum-Deputy Secretary, Alkatara Ko
7. Sri Jawahar Lal, The Presenting Officer-Cum-Incharge Assistant, Road Construction Department, Bihar
8. The Collector-Cum-District Magistrate, Jehanabad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Adv.
For the State : Mr. Kinkar Kumar, SC-9 with
Mr. Yogesh Kumar, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 30-01-2023 1. For the reasons stated, I.A. No. 7218 of 2016 is
allowed. Liberty is granted to challenge the order passed in
appeal.

2. Learned counsel for the petitioner is invited attention to the Judgment passed by the Coordinate Bench in the case of the co-delinquent Nalin Bilochan in C.W.J.C. No. 2564 of 2014, decided on 29.11.2016, whereby the co-delinquent



against whom the same charges were levelled as against the petitioner, challenged the punishment order, whereby he was also similarly punished with withholding of three annual grade increments with cumulative effect and censure and posting against non work.

3. Learned counsel submits that the petitioner's case is being similar to that of Nalin Bilochan stands covered by the judgment passed therein.

4. Learned counsel appearing for the respondents State fairly concedes that the case of the petitioner is akin to that of Nalin Bilochan.

5. The Coordinate Bench after considering the enquiry proceedings found that there was a dis-agreement of the disciplinary enquiry with the enquiry report, but no notice of dis-agreement was served upon the petitioner.

6. Keeping in view the law laid down by the Apex Court in case of **Punjab National Bank & Ors. Vrs. Kunj Bihari Misra, 1998 (7) SCC 84** and the view taken by the Coordinate Bench, this writ petition is deserve to be allowed.

7. It would be apposite to quote the observation made by the Coordinate Bench which is as under:-

“In the circumstances discussed, this Court is at a loss to appreciate as to the foundation for



continuation of the disciplinary proceeding against the petitioner. In my opinion the foundations are completely lacking. Of the three charges, while the petitioner is not a signatory of the bill mentioned at Charge No.1, in so far as the bills at Serial Nos. 2 and 3 are concerned, the payments were stopped on the complaint of the petitioner by the District Magistrate, Jehanabad. The records produced by Mr. Manoj Kumar shows that despite the protest made by the District Magistrate, Jehanabad on the institution of criminal case against the petitioner and one other, the criminal case has been instituted accusing the petitioner of criminal conspiracy in the passage of bills and such institution ipso facto has been made a foundation for the disagreement note and imposition of penalty. It is rather weird that despite the finding recorded by the Enquiry Officer exonerating the petitioner of all charges and despite the recommendation of the District Magistrate, Jehanabad that it is on the information of the petitioner and one Sunil Kumar Gupta that the payments were stopped to the contractor and despite the evidence supporting the explanation of the petitioner yet a whimsical disagreement note stands issued at Annexure-9 to culminate into an order of punishment vide Annexure-15 which mechanically endorses



the said views.

In my considered opinion, an act simplicitor of a Government servant facing disciplinary proceeding cannot be held a misconduct unless the act is objective, backed with motivated action and the consequences are disastrous. There is complete absence of evidence to attribute a misconduct in the action of the petitioner. In fact the evidence is to the contrary and it is the timely action of the petitioner that the payment could be stopped. The agreement note impugned at Annexure-9 as well as the punishment order at Annexure-15 upholding the charge of misconduct, have been mechanically passed and the opinion recorded therein, runs contrary to the facts available on record.

In result, the order bearing Notification No. 5041 dated 29.4.2011 of the State Government whereby the petitioner has been visited with the punishment, cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed. The consequences shall follow.

Let the records of the disciplinary proceeding so produced by Mr. Manoj Kumar, learned A.C. to S.C.12 be returned.”

8. The order of punishment dated 19.09.2011 is accordingly quashed and set aside.

9. Keeping in view the order of punishment having



been quashed. The order passed in appeal dated 14.11.2013 is also accordingly quashed and set aside.

10. The writ petition stands allowed with all consequential benefits.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 132

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