

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13811 of 2022

Arvind Kumar, S/o Late Surendra Kumar, Resident of Flat No. 308,
Haricharan Residency Nandanpuri, P.O. - B.V. College, P.S. - Rajeev Nagar,
Patna - 14.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. Chief Inquiry Commissioner, General Administration Department, Government of Bihar, Patna.
4. Inquiry Officer-cum-Inquiry Commissioner, General Administration Department, Government of Bihar, Patna.
5. Joint Secretary, Road Construction Department, Government of Bihar, Patna.
6. Deputy Secretary, Road Construction Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Raju Giri, Advocate Mr. Kumar Shantanu, Advocate
For the State	:	Mr. Swapnil Kumar Singh, AC to GP-19

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 21-09-2023

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner, an Executive Engineer in the Road Construction Department, was taken in custody in a trap case on the allegation of having accepted illegal gratification. The same led to lodging of Vigilance P.S. Case No. 045 of 2019. The petitioner was arrested on 17.11.2019. It is not in dispute that he



has been placed under suspension by an order dated 25.11.2019. Having regard to the fact that the petitioner was in custody, the petitioner's suspension was with effect from the date on which he was taken into custody i.e. 18.11.2019. The petitioner remained in custody for nearly one year. He was released on bail on 04.11.2020. On his release, he has submitted application for joining on 09.11.2020. The joining has been accepted on 22.01.2021. The effect is that the petitioner has since 18.11.2019 continued in suspension, now which is a period of nearly four years.

3. Learned counsel for the petitioner submits that the continuance of suspension for nearly four years assumes penal proportion, more so in view of the fact that the petitioner is being continued on suspension while being given only 50 percent of his salary as subsistence allowance. Even his request for enhancement of the subsistence allowance made on 05.08.2022 has been rejected by the authorities by an order dated 22.02.2023 bearing memo no. 961 issued by the Joint Secretary of the Road Construction Department. The petitioner's claim for subsistence allowance has wrongly been rejected. It is submitted that in terms of Rule 10(1)(i) of the Bihar Government Servants (Classification, Control & Appeal) Rules,



2005 (hereinafter referred as “Rules”), the petitioner was entitled to enhancement of subsistence allowance having regard to the fact that the procrastination of the period of suspension was not attributable to the petitioner. He submits that by a vague and cryptic order, the petitioner’s request has been turned down and the order turning down his request for enhancement dated 22.02.2023 is unsustainable.

4. Learned counsel for the State on the other hand submits that for nearly a year out of the four year period, the petitioner was in custody. After he was released on bail, his joining was accepted in the Department on 22.01.2021. Within two months thereafter, the charge memo has been issued on 16.03.2021. The Authorities have proceeded diligently and it is because of the uncooperative attitude of the petitioner that the proceedings are continuing since 16.03.2021. The order rejecting the petitioner’s claim clearly records that the delay in the proceedings is attributable to the petitioner. The finding is sustainable under Rule 10(1)(i) of the Rules and requires no interference by this court.

5. Upon consideration of the rival submission, this court would observe that petitioner’s entitlement was required to be considered with reference to Rule 10(1)(i) of the Rules,



which reads as follows:-

“10.(1)(i) the amount of subsistence allowance may be increased by such a suitable amount, which shall not be exceeding fifty per cent of the subsistence allowance admissible during the period of the first twelve months, if in the opinion of the said authority, the period of suspension has been prolonged for which, for reasons to be recorded in writing, the Government Servant is not responsible.”

6. From a plain reading of the provision it is apparent that it is required to be examined whether the period of suspension has been prolonged for reasons for which the government servant is not responsible. It is only in such circumstance that the enhancement can be granted.

7. The court finds that the respondent-Authorities themselves have been granting documents to the petitioner at least till 15.05.2023, which is obvious from the letter of this date which is Annexure-R/1 to the counter-affidavit filed by Respondent Nos. 2, 5 and 6. It is also obvious from the records that much prior thereto, in the proceedings dated 02.08.2022, the enquiry officer has taken note of demands made by the petitioner for certain documents which were required to be made over to the petitioner. The documents available on record show that the Authorities were still in the process of fulfilling the petitioner's requirement for documents. Had the documents



been considered to be unnecessary or in any way to be irrelevant, the authorities were well within their means to reject the claim. The fact that they have taken a decision to supply the documents and supplied the same up till May, 2023, is glaring indication of the fact that the prolongation of the suspension period is not attributable to the petitioner under Rule 10(1)(i) of the Rules. The order dated 22.02.2023 rejecting the petitioner's claim for enhancement, therefore, is clearly unsustainable. The order records in paragraph-3 as follows:-

“3. आपके विरुद्ध संचालित विभागीय कार्यवाही में ससमय अपना बचाव-बयान न देकर आपके द्वारा अनेक अवसरों पर गठित आरोपों से भिन्न कागजातों/अभिलेखों की मांग किये जाते रहे हैं और इसकी आड़ में ऐन-केन-प्रकारेण विभागीय कार्यवाही को विलंबित करने का प्रयास किया जाता रहा है। आपके द्वारा न तो विभागीय कार्यवाही में और न ही आपराधिक काण्ड के अनुसंधान में अपेक्षित सहयोग की जा रही है। अतएव उक्त तथ्यों से स्पष्ट है कि विभागीय कार्यवाही /आपराधिक कार्यवाही में हो रहे विलंब के लिए आप स्वयं जबावदेह है , और तदनुसार विभागीय कार्यवाही / आपराधिक कार्यवाही के जाँच / अनुसंधान में रहने के कारण ही निलंबन की अवधि में बढ़ोतरी हो रही है।”

8. The same does not show that the authorities have considered with reference to any specific occurrence or communication, which can be said to be attributable to the petitioner, with respect to delay or prolongation of the suspension period. A very vague and cryptic reason has been assigned which *ex facie* is unsustainable as also contrary to the



records of the case, as noted above.

9. The order dated 22.02.2023 bearing memo no. 961 issued by the Joint Secretary of the Road Construction Department is, therefore, quashed.

10. The respondent-Authorities should enhance the petitioner’s subsistence allowance by passing order under Rule 10(1)(i) of the Rules afresh with effect from 05.08.2022, i.e. the date when the petitioner applied for the same. The due and admissible benefits be made available to the petitioner within four weeks from the date of receipt/production of a copy of this order.

11. It is needless to say that the respondent-Authorities are also required to expedite the proceedings pending against the petitioner, subject of course to the continued full cooperation of the petitioner.

12. Writ application is accordingly allowed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
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