

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.753 of 2019

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Datt Narayan Tiwari @ Sri Datt Narayan Tiwari S/o Late Rama Tiwari
Resident of Village- Ward No.-6, Jogiya Tola, Turha Patti, P.O.- Turha Patti,
P.S.- Turha Patti, Dist- West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal Secretary, Water Resources Department, Bihar, Patna
2. The Director, Land Acquisition and Rehabilitation, Water Resources Department, Bihar, Patna
3. The Special Land Acquisition Officer, Gandak Project, Muzaffarpur
4. The Special Land Acquisition Officer, Medium Irrigation Project, Jamui

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhurendra Kumar
For the Respondent/s : Mr.Harish Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 17-01-2023 Application has been filed for quashing the order contained in Memo No. 683 dated 05.05.2017 issued by The Director, Land Acquisition and Rehabilitation, Water Resources Department, Bihar, Patna whereby 15% of pension of the petitioner has been deducted/withheld as major punishment under the provisions of Rule 43(b) of Bihar Pension Rule.

The short facts giving rise to this application are that while the petitioner was posted on the post of Draftsman in the office of Special land Acquisition Officer, Gandak Project, Muzaffarpur, a departmental proceeding was initiated against the petitioner on certain charges. However during pendency of



the departmental proceeding, petitioner retired from service as such the department proceeding was converted into 43(b) of Bihar Pension Rules and memo of charge was served vide order dated 06.07.2016. After considering the show cause the order of punishment was passed. .

The short submission made on behalf of the petitioner to assail the impugned order of punishment is to the effect that without considering the second show cause reply of the petitioner, the order of punishment had been passed. He submits that non-compliance of the same has resulted in, violation of principle of natural justice and against the disciplinary rules. He submits that it is mandatory on the part of the disciplinary authority to consider the show cause and to deal with the defence of the petitioner but in this case, without considering the show cause merely on the conjunctures and surmises, that petitioner has been working in the office for the last 7 years, the defence of the petitioner has been rejected.

However the counsel for the state in reply submits that there is not any infirmity or irregularity in this order and after following due process of law, the order of punishment had been passed.

It is further submitted that the second show cause



issued to the petitioner vide letter no. 2108 dated 28.12.16 enclosing a copy of the inquiry report, petitioner submitted his reply which was considered by the Competent Authority and was found that petitioner has failed to defend the charges and his defence cannot be accepted because he had worked in different Special and Acquisition Offices and he was well versed in doing different type of jobs in such offices.

Under the aforesaid circumstances, the charges against the petitioner stood proved in the aforesaid proceeding for which minor penalty of withholding 15% pension has been imposed upon the petitioner vide office order no. 42 as contained in Memo No. 683 dated 05.05.2017.

Having heard the learned counsel for the parties, and having perused the materials on record, this court is in agreement with the contention made on behalf of the petitioner. From bare perusal of the impugned order it is apparent that none of the plea taken by the petitioner in his defence has been considered by the disciplinary authority and only on presumption that the petitioner has worked in the office of Land Acquisition for the last several years charges have been found to be proved which is contrary to law.

In view of the aforesaid discussion and for the reasons



indicated above, this court would find that the impugned order of punishment passed against the petitioner dated 05.05.2017 is bad in law and is, accordingly, quashed.

This matter is remitted for its conclusion in accordance with law from the stage of second show cause, it is directed that the same shall be disposed of by a speaking and reasoned order, after hearing the parties, in accordance of law within a period of three months from the date of receipt of copy of this order.

(Prabhat Kumar Singh, J)

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