

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1261 of 2022

Radheshyam Ram Son of Late Chirkut Ram Resident of Flat Numbar 6608,
Dream Dwell Apartment, RK Puram near Saguna Mode, P.S. Danapur, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary and Rural Works Department, Visvesvaraya Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Rural Works Department, Vishveshwarya Bhawan, Bailey Road, Patna.
3. The Deputy Secretary, Rural Works Department, Visvesvarya Bhawan, Bailey Road, Patna.
4. The Engineer in Chief, Rural Works Department, Visvesvaraya Bhawan, Bailey Road, Patna.
5. The Chief Engineer, Rural Works Department, Vishveshwarya Bhawan, Bailey Road, Patna.
6. The Special Executive Officer, Rural Works Department, Vishveshwarya Bhawan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kumar with
Mr. Sanjeev Kumar Mishra,
Ms. Manini Jaiswal and
Ms. Ankita Kumari, Advocates
For the Respondent/s : Mr. Kumar Alok, SC-7
Mr. Prem Ranjan Raj, AC to SC 7

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 20-08-2024

Heard Mr. Surendra Kumar, learned Advocate for the
petitioner and Mr. Prem Ranjan Raj, learned Advocate for the
State.

2. The petitioner is aggrieved by the order as contained
in Memo No. 1105 dated 13.08.2021 issued by the respondent-



Special Executive Officer, Rural Works Department, whereby the petitioner has been inflicted with the punishment of deduction of 5% of pension for the next five years.

3. Learned Advocate for the petitioner contended that the petitioner was initially appointed on the post of Junior Engineer and on being found satisfactory service, he was granted promotion to the post of Assistant Engineer and subsequently in the year 2010 the petitioner was promoted to the post of Executive Engineer in the Rural Works Department.

4. While the petitioner was posted as Executive Engineer in Rural Works Department vide resolution as contained in Memo No. 2415 dated 29.07.2016 the petitioner was put to departmental proceeding and memo of charge was served upon him with an allegation that flank of the proposed project had not been made properly and the payment was made to the contractor in excess to his entitlement. In response to the memo of charge the petitioner submitted his detailed show cause explanation which was duly considered by the Enquiry Officer and finally the petitioner has been exonerated from all the charges vide Memo No. 195 dated 27.09.2015, copy of which has been marked as Annexure-3 to the writ petition. The aforesaid enquiry report was placed before the disciplinary



authority. However differing with the final report a second show cause notice was issued, copy of which has been brought on record by way of supplementary counter affidavit filed on behalf of respondent nos. 1 to 6 and marked as Annexure-A series.

5. Learned Advocate for the petitioner vigorously contended that after differing with the finding of the Enquiry Officer, no second show cause notice had ever been served upon the petitioner. This fact can also be verified from the impugned order as there is no discussion. Had the second show cause notice been served upon the petitioner, he would have certainly filed his proper reply. However, the impugned order only suggests that in the second show cause notice, as contained in Memo No. 2705 dated 05.09.2019, the explanation of the petitioner was sought for but the same has not been submitted by the petitioner. In the meantime, the petitioner superannuated on 29.02.2020. Thus the departmental proceeding was converted under Rule 43(b) of the Bihar Pension Rules, 1950 vide notification No. 1246 read with Memo No. 1247 dated 03.07.2020.

6. In response to the specific averments of the petitioner that he has not been served upon the second show



cause notice, differing with the enquiry report, no averment has been made in the counter affidavit. Except the fact that on account of a massive fire, took place in the Vishwasaraiya Bhawan the record is completely burnt out and as such the Department is not in a position to bring the fact of service of second show cause notice to the petitioner, on record.

7. Considering the fact that the impugned order deducting the pension of the petitioner to the tune of 5% for five years is based upon only the fact that since the petitioner has failed to file reply to the second show cause notice, differing with the finding of the Enquiry Officer, punishment has been awarded; There is no discussion with regard to the enquiry report and the explanation of the petitioner, this Court deems it proper to relegate the matter to the respondent no. 2 for fresh consideration. The petitioner is further directed to file a detailed explanation in response to the second show cause notice dated 05.09.2019, which has now been served upon him through supplementary counter affidavit, preferably within a period of six weeks from today. On receipt of the explanation as aforementioned, the respondent no. 2 shall consider the same and pass a reasoned and speaking order within a further period of six weeks thereafter.



8. In the meantime, the impugned order as contained in Memo No. 1105 dated 13.08.2021 shall remain in abeyance.

9. The writ petition stands disposed of with the aforesaid direction.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	27.08.2024
Uploading Date	
Transmission Date	

