

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14130 of 2019

Himanshu Shekhar Son of Late Shiv Kumar Sharma, Resident of Flat No. 104, Vijay Residency, Ranjan Path, Aviyanta Nagar, Opposite Shish Mahal Marriage Hall, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Water Resources, Bihar, Patna.
2. The Joint Secretary, Department of Water Resources, Bihar, Patna.
3. The Deputy Secretary, Department of Water Resources, Bihar, Patna.
4. The Engineer-in-Chief, (North), Water Resources Department, Irrigation Bhawan, Patna.
5. The District Magistrate, Khagaria.
6. The Chief Engineer, Flood Control and Water Conservation, Water Resources Department, Samstipur.
7. The Superintending Engineer, Control Circle, Water Resources Department, Khagaria.
8. The Executive Engineer, Flood Control Division No.- 2, Water Resources Department, Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Adv.
	:	Mr. Indu Bhushan, Adv.
	:	Ms. Swati Parmar, Adv.
For the Respondent/s	:	Mr. Anjani Kumar (AAG4)
	:	Mr. Sanjay Kumar, AC to AAG4

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 29-01-2024 Heard learned counsel for the petitioner and learned counsel for the State.

2. The present writ petition has been filed for quashing the impugned order of penalties vide Memo No.1233 dated 05.06.2018 contained in Annexure-16 by respondent No.2 whereby and whereunder without any departmental



proceedings, penalties have been imposed. Firstly for withholding of three increments of pay without cumulative effect and the secondly for withholding of promotion for three years from the date of the eligibility.

3. Counsel for the petitioner submits that admittedly, the impugned punishment order is basically minor penalties which has been defined under Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as ‘ the Rules of 2005’).

4. Counsel further submits that the first part of minor penalty that is punishment for withholding of three increments of pay without cumulative effect has now infructuous after completion of three years, but for the second part that withholding of promotion for three years from the date of eligibility is no penalty at all which is defined in Rule 14 of the Rules of 2005 under heading minor penalties.

5. Counsel further submits that the penalty as mentioned in the said order impugned comes within the category of (ii) of *Explanation* of Rule 14 of the Rules of 2005, and therefore, this shall not amount to penalty within meaning of this rule.

6. Counsel for the State submits that there is a



categorical finding of the Disciplinary Authority in which two punishments were imposed. Counsel for the State agrees that the first penalty is become infructuous. About second penalty, he submits that it shall continue for three years from the date of his eligibility for promotion. As such, there is no case of the petitioner.

7. Upon going through the argument and the pleadings of the parties, it is necessary to quote *Explanation* (i) and (ii) of Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 which states as follows:-

[Rule 14.....]

“Explanation :-The following shall not amount to a penalty within the meaning of this Rule, namely:-

(i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the Rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;

(ii) withholding of promotion of a Government servant after consideration of his case to a service, grade or post for which he is eligible, whether he is in a substantive or in officiating capacity.”



which clearly states that withholding of promotion of a Government servant after consideration of his case to a service, grade or post for which he is eligible, whether he is in a substantive or in officiating capacity shall not amount to a penalty within the meaning of this rule. As such, this Court is of the firm view that the second penalty

“देय तिथि से प्रोन्नति पर तीन वर्षों तक रोक”

(withholding of promotion for three years from the date of petitioner's eligibility for promotion) is not a punishment according to (ii) of *Explanation* of Rule 14 of the Rules of 2005. As such, it is hereby directed that the second part of promotion as contained in Memo No.1233 dated 05.06.2018 shall have no force and the second part shall not create any hurdle in granting promotion to the petitioner as it is not a punishment under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

8. With the aforesaid direction, the present writ application is hereby allowed.

(Dr. Anshuman, J.)

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