

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1343 of 2023

In

Civil Writ Jurisdiction Case No.6248 of 2021

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Awadhesh Kumar Tiwari @ Awdhesh Kumar Tewari Son of Late Gauri Shankar Tiwari Resident of village Allapur, Police Station- Manjagarh, District-Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
3. The Joint Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
4. The Joint Secretary cum Officer on Special Duty cum Chief Vigilance Officer, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
5. The Deputy Secretary, Building Construction Department, Government of Bihar, Patna.
6. The Additional Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
7. The Under Secretary, Building Construction Department, Government of Bihar, Vishweshraiya Bhawan, Patna.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rabi Bhushan Prasad No. 1, Advocate
For the Respondent/s : Mr. S.D. Yadav (AAG 9)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 04-02-2025

Heard learned counsel for the appellant and learned
counsel for the respondents.

I.A. no.1 of 2024



2. The instant interlocutory application has been filed by the appellant praying for condoning the delay of 10 days in filing of the instant appeal.

3. Having heard learned counsel for the parties and taking into consideration the contents of the petition and the submissions made, the delay of 10 days in filing of the appeal is condoned.

4. I.A. no.1 of 2024 stands allowed.

L.P.A. no.1343 of 2023

5. The instant appeal has been preferred by the appellant against the judgment dated 19.9.2023 passed in CWJC no.6248 of 2021.

6. At the relevant time while posted as Executive Engineer, Building Division, Sitamarhi as also holding the additional charge of the Executive Engineer, Building Division, Sheohar, the appellant was proceeded against departmentally under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules') on the recommendation made by the District Magistrate, Sitamarhi on 30.3.2014. The charges against the appellant was of remaining absent from the Headquarters without prior permission, giving incorrect information of being in Sheohar



when he was in Patna, negligence in submitting of map with respect construction of hall for counting of votes in the Lok Sabha elections and of using inappropriate language in his reply. In course of enquiry, the appellant submitted his point wise reply to the charges. The Chief Engineer submitted the enquiry report dated 31.7.2015 according to which none of the charges levelled were found to be proved. The departmental proceeding was extended under Rule 18(2) of the CCA Rules. The appellant in the meantime having retired from service on 31.3.2018. The departmental proceeding was converted into a proceeding under Rule 43(b) of the Bihar Pension Rules. A further show cause was issued differing with the contents of the enquiry report with respect to charge no.4. The appellant submitted his reply to the same whereafter the respondents came out with the order dated 16.10.2019 imposing the punishment of deduction of 5% of the pension of the appellant for a period of one year.

7. The appellant challenged the said order of punishment by filing the writ application being CWJC no.6248 of 2021 praying for quashing the order of punishment as also for a direction to the respondents to return back the deducted amount. The said writ application having been disposed of without interfering with the order of punishment imposing the



penalty upon the appellant, the instant appeal has been preferred against the same.

8. It is submitted by learned counsel appearing for the appellant that so far as the initiation of the departmental proceeding is concerned, the same was on the recommendation of the District Magistrate. The enquiry having proceeded, taking into consideration the charge wise reply submitted by the appellant, none of the charges were found to be proved. This included the charge no.4 with respect to use of inappropriate language by the appellant in his reply.

9. With respect to charge no.4, it may be noted here that the same was not part of the recommendation dated 30.3.2014 made by the District Magistrate which led to initiation of the departmental proceeding against the appellant. Further, the Chief Engineer-cum-Enquiry Officer in his enquiry report dated 31.7.2015 found none of the four charges to have been proved. Specifically while discussing the appellant's reply in connection with charge no.4, he was of the opinion that the reply of the appellant to the show cause merited consideration for the reason that besides being posted at Sitamarhi headquarters, having been given the additional charge of Sheohar, the appellant was correct in stating that he could not remain present



at both the places at the same time. The appellant having expressed the same in clear terms, it cannot be said to be use of inappropriate language by him. As such, the enquiry officer was of the opinion that this charge also was not proved.

10. It further transpires that the second show cause notice was issued to the appellant purportedly differing with the finding of the enquiry officer so far as charge no.4 is concerned. However on perusal of the said order contained in resolution dated 24.10.2016, this Court finds that no reason has been assigned for differing with the findings of the enquiry officer in connection with the said charge.

11. On further perusal of the material on record, it transpires that on the appellant having given his reply to the second show cause, a report was submitted by the Chief Engineer, (Design)-cum-Conducting Officer, Building Construction Department on 1.2.2019. On perusal of the said report, it transpires that so far as charge nos.1, 2 and 3 are concerned, the same were found to be not proved in absence of any evidence. With respect to charge no.4, it is stated that on finding of inappropriate language having been used in the letter/written communication, this charge is proved and consequently the order of punishment was passed.



12. It may be observed here that neither any documentary nor oral evidence was led in course of enquiry nor does the report dated 1.2.2019 of the conducting officer giving finding of charge no.4 having been proved mentions about any oral or documentary evidence nor is there any discussion of any letter/communication having been exhibited or proved by any person. Thus, this finding of the conducting officer with respect to the charge is also clearly in teeth of the judgment of the Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors., (2009) 2 SCC 570.***

13. The aforesaid facts including there being no discussion whatsoever of any oral or documentary evidence leading to proof of charge no.4, the order of punishment of deduction of 5% of pension for a period of one year from the appellant who retired on 31.3.2018 is clearly illegal and not sustainable and the learned Single Judge erred in not interfering with the same.

14. As such, the order dated 19.9.2023 passed in CWJC no.6248 of 2021 by the learned Single Judge is not sustainable and is hereby set aside.

15. The prayer made by the appellant in the writ application is allowed.



16. The respondents are directed to pay the amount deducted from the pension of the appellant pursuant to the order of punishment to the appellant within a period of three months.

17. The appeal stands allowed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.02.2025
Transmission Date	

