

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8295 of 2018

=====

Ranjit Kumar Son of late Bisho Mahto Resident of Village- Nagdih, Police
Station Barbigha, District- Sheikhpura

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources
Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna.
3. The Chief Engineer, Water Resources Department, Government of Bihar,
Patna.
4. The Special Work Officer, Water Resources Department, Government of
Bihar, Patna.
5. The Superintendent Chief (South), Water Resources Department,
Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Nirmal Kumar, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG-4

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

9 23-01-2025

Re: I.A. No. 1 of 2024

Heard learned counsel for the petitioner and

learned counsel for the State.

2. The present interlocutory application has been

filed for amendment of the prayer by way of adding one more
prayer relating to quashing of the appellate order dated
18.05.2018 contained in Memo No. 1076 passed by the Joint
Secretary of the Government by which the order of punishment
dated 18.12.2017 against the petitioner has been affirmed.



3. Learned counsel for the petitioner submits that after filing of appeal, when no order has been passed in the appeal then the petitioner has moved before this Hon'ble Court but, subsequently, during pendency of the appeal and pendency of the present writ petition, the appellate order has been passed and the said appellate order has not been provided to the petitioner and it has been provided to the petitioner only by way of counter-affidavit and it is due to this reason, there is delay in challenging the appellate order. He submits that the said appellate order is annexed as Annexure-17 in I.A. No. 1 of 2024.

4. Learned counsel for the State submits that he has no objection on the said interlocutory application.

5. In this view of the matter, I.A. No. 1 of 2024 is hereby allowed.

Re: C.W.J.C. No. 8295 of 2018

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

7. The present writ application has been filed challenging the original order dated 18.12.2007 (Annexure-10) contained in Memo No. 2245 dated 18.12.2017, as well as the appellate order (Annexure-17) contained in Memo No. 1076



dated 18.05.2018 passed by the disciplinary authority and the appellate authority respectively.

8. Learned counsel for the petitioner submits that the petitioner was appointed in the year 2007 as Junior Engineer on the vacant sanctioned post in the Office of Flood Control, Pramandal Jhakraha Camp, Gopalganj. He was further posted as In-Charge of Godown at Central Godown (Bhandar), Gopalganj as Junior Engineer. He further submits that during his entire tenure, he was posted at various places and his work was found satisfactory and before 2014 there was not a single charge against the petitioner nor any punishment was imposed against him. He further submits that on 26.08.2014 the petitioner was put under suspension with immediate effect on *prima facie* charge due to breakage of Salehpur Tandaspur, Charki Ring Bandh and his headquarter during suspension period was fixed in the Office of Chief Engineer, Water Resource Department, Samastipur. He further submits that the authority have decided to conduct the departmental proceeding and in this regard respondent no. 3 has issued a letter dated 25.11.2014 appointing a conducting officer under Rule 17(2) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules, 2005'). He was



served charge memo about breaking of Ring Bandh, Salehpur Tandaspur, Charki. He further submits that he has filed his show cause in spite of the fact that no documents were supplied to him. On 10.12.2014, the conducting officer has issued a letter for filing reply of show cause on which the petitioner has submitted his show cause reply on 03.02.2015 explaining all relevant materials before him. On 24.06.2015, the Conducting Officer-Cum-Superintending Engineer has conducted the said departmental proceeding and examined all relevant papers as well as the show cause of the petitioner and submitted his report to the disciplinary authority, in which it has been stated by him that no *prima facie* case is made out against the petitioner and conducting officer has held that the charge nos. 1 and 2 are not proved. It has also been held that petitioner is not liable for any payment for the said repair. He submits that on 04.09.2015 respondent no. 3 had issued a second show cause notice to the petitioner without any dissenting note and directed to file the second show cause reply within 15 days from the receipt of the notice, failing which the respondent shall pass order against him. He further submits that demanding of second show cause notice in this way is basically gross violation of CCA Rules, 2005, as issuance of such notice without dissenting note is



basically arbitral exercise of the power so vested in him by virtue of the CCA Rules, 2005. It is the specific pleading of the petitioner that on 08.01.2015 and 23.01.2015, the petitioner had filed representation for supplying the relevant documents so that the show cause may be filed within time, but in spite of the several efforts, no any documents were supplied to the petitioner. He further submits that on 10.12.2014, the conducting officer has issued a letter to the petitioner for filing the reply of show cause. In response thereof, the petitioner has submitted a show cause on 03.02.2015. The enquiry report and the relevant paper has also not been provided to the petitioner even after repeated request. He further submits that in the departmental proceeding, even on repeated demand, no document was furnished which has been categorically acknowledged by the conducting officer, who has issued letter no. 190 dated 20.06.2015 stating therein that the petitioner has demanded several documents *i.e.*, copy of Flood Effect Rule, 2014, copy of SOP, inquiry report of higher officials and the statement of local people but in spite of the said fact, relevant papers were not provided to the petitioner and ultimately the conducting officer has submitted his report for needful action. He further submits that the conducting officer has subsequently



passed final order in which he imposed punishment on him by which promotion had been stopped up to three years and one enhancement of pay-scale had been stopped with cumulative effect on the basis of departmental proceeding.

9. He further submits that being aggrieved and dissatisfied with the order dated 18.12.2017 passed in the departmental proceeding, the petitioner has preferred appeal before the appellate authority who has not passed any order then the petitioner has preferred this writ petition but during pendency of the writ petition, counter-affidavit has been filed. In the counter-affidavit, he acknowledged that the appellate order has been passed against him vide Memo No. 1076 dated 18.05.2018. The said order he has challenged by virtue of I.A. No. 1 of 2024 which has been allowed.

10. Learned counsel for the petitioner submits that since the charges against the petitioner was found not proved by the Inquiry Officer then in that case without disagreement memo, punishment could not be passed against him. He further submits that the said final order is absolutely illegal and not in accordance with law and since the order is illegal, therefore, the appellate order is automatically illegal.

11. Learned counsel for the State, on the other



hand, submits that the petitioner's writ petitioner is not maintainable due to the reason that entire order has been passed completely in accordance with law following the due process as well as the rule of natural justice. He further submits that in the counter-affidavit, the disagreement memo has been attached in which the reason has been assigned as to why the disciplinary authority has not accepted the inquiry report. He further submits that in the enquiry report, it is a categorical finding of the disciplinary authority that the petitioner is responsible for not saving the "*tat bandh*", and, therefore, the order passed by the original authority is completely in accordance with law. He also submits that the period of punishment has already been crossed. He further submits that in the appeal, every point has been discussed by the appellate authority and, therefore, there is no need of any interference in the said appellate order.

12. After hearing the parties and going through the pleadings as well as the documents on record, it transpires to this Court that in the disciplinary proceeding conducted against the petitioner, three charges were framed as mentioned in Prapatra-Ka (Annexure-2). The petitioner has filed a request letter vide Annexure-3 series, in which he has demanded the documents on the basis of which charges were proposed to be



proved against him (Annexure-3). It also transpires that the petitioner has filed his first show-cause taking all defence before the Inquiry Authority and the Inquiry Authority has submitted his report dealing with the defence of the petitioner and found all three charges not proved against the petitioner. The ground taken by the Inquiry Authority is that the damage of the “*tat bandh*” took place between 4 to 5 kilometer whereas the jurisdiction of the petitioner on the said “*tat bandh*” was between kilometer 8.5 to 10.5. The actual damage was in between 4 to 5 kilometer which is not within the jurisdiction of the present petitioner. It also transpires to this Court that second show-cause notice was issued which is Annexure-6 by which the Disciplinary Authority differed from the opinion of the Inquiry Authority. In the second show-cause/disagreement memo, second show-cause was directed to be filed on the point of disagreement vide Annexure-6. In this regard, detailed reply has been filed. It transpires to this Court that Annexure-6 disagreement memo has been issued in compliance of Rule 18(2) of the CCA Rules, 2005. Rule 18(2) of the CCA Rules, 2005 stats as follows:-

*“The Disciplinary Authority,
after receipt of the enquiry report as per
Rule 17(23)(ii) or as per sub-rule (1), shall,*



if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

13. It transpires to this Court that the Disciplinary Authority has to assign reasons for such disagreement from enquiry report and, then, record its own finding. But in the said letter, i.e., Letter No.200 dated 04.09.2015 (Annexure-6)-agreement memo, the Disciplinary Authority has not recorded its reason for such disagreement; rather instead thereof, it has been mentioned that at the government level analysis has been made but only record its own finding on such charge. It is due to this reason, such letter issued under Rule 18(2) of the CCA Rules, 2005 has been made in gross violation of Rule 18(2) of the CCA Rules, 2005 and, therefore, this Court is of the firm view that there is irregularities in the procedure made in the Disciplinary Authority and, hence, the final order dated 18.12.2017 passed by Disciplinary Authority and subsequently the appellate order contained in Memo No.1076 dated 18.05.2018 passed by Appellate Authority are hereby set aside.

14. It is made clear that the Disciplinary



Authority shall take a decision within 90 days with regard to reinstatement of service in accordance with law during the pending proceeding of the disciplinary authority. It is made clear that option shall be at the hand of the Disciplinary Authority to do the needful, in accordance with law, after the enquiry report onwards and the Disciplinary Authority shall complete the proceeding within 90 days from the date of production of the order, if wants to continue. But it is made clear that this aspect shall be considered that the damaged “*Tat-bandh*” was not within the territorial jurisdiction of the petitioner and specific finding shall be given on this point as mentioned and considered by the Inquiring Authority.

15. In result, the original order dated 18.12.2017 (Annexure10) and subsequently the appellate order contained in Memo No.1076 dated 18.05.2018 (Annexure-17) passed by Appellate Authority are hereby set aside. Accordingly, this writ petition is allowed.

(Dr. Anshuman, J)

Mkr./-

U			
---	--	--	--

