

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.660 of 2023

In
Civil Writ Jurisdiction Case No.10402 of 2016

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1. The State of Bihar
 2. The Principal Secretary, Water Resources Department, Bihar, Patna
 3. The Principal Secretary, Disasters Management Department, Bihar, Patna
 4. The Joint Secretary, Water Resources Department, Bihar, Patna
 5. The Additional Secretary Water Resources Department, Bihar, Patna
 6. The Deputy Secretary Water Resources Department, Bihar, Patna
 7. The Under Secretary, Water Resources Department, Bihar, Patna
 8. The Engineer-in-chief North, Water Resources Department, Bihar, Patna
 9. The Chief Engineer, Water Resources Department, Purnia
 10. The Chief Engineer, Water Science and Scheme Arrangement, Department of Water Resources, Bihar, Patna
 11. The Superintending Engineer, Mahananda Flood Control Circle, Katihar
 12. The Superintending Engineer, Flood Scheme and Monitoring Anchal, Water Resources Department, Patna
 13. The Superintending Engineer, Flood Control Division, Katihar
 14. The Executive Engineer, Flood Control Division, Katihar
 15. The Executive Engineer, Flying Squad Division No. 7, Water Resources Department, Patna
 16. The Assistant Engineer, Flying Squad Circle, Water Resources Department, Patna

... .. Appellant/s

Versus

Indrajit Saxena Son of Late Anup Ram Resident of Shishmahal Apartment,
Block - B, Flat No. 4B, Near Bahadurpur Gumti, P.S. - Bahadurpur, District -
Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailesh Kumar, AC to GP-5
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)



4 31-03-2026 Heard learned counsel for the parties.

2. The present *intra* court appeal is directed against the order dated 12.01.2023, passed in CWJC No. 10402 of 2016, whereby the learned Single Judge has allowed the writ petition and set aside the orders dated 24.12.2012 (Annexure-2 to the Writ Petition) and 01.04.2015 (Annexure-4 to the Writ Petition).

3. The brief facts of the case are that the respondent (Writ Petitioner) was appointed as an Assistant Engineer in the concerned department on 04.07.1987. Subsequently, he was promoted to the posts of Executive Engineer, Superintending Engineer, and Chief Engineer. On 04.02.2010, the respondent was issued a show cause notice, directing him to explain the charges levelled against him. The respondent submitted his reply dated 25.08.2010 and pursuant thereto, an order of punishment dated 24.12.2012 was passed. Thereafter, he preferred a review of the said order before the Principal Secretary, Water Resources Department, which came to be dismissed *vide* order dated 01.04.2015, and the order of punishment was affirmed.

4. The writ petitioner challenged the aforesaid orders of punishment before the learned Single Judge on the ground



that the explanation/reply which was furnished by the petitioner has not been considered by the concerned authorities. The learned Single Judge allowed the writ petition and held that while passing the order imposing punishment, the concerned authorities did not consider the explanation of the petitioner. As such, the impugned orders were passed in violation to the principles of Natural Justice. The relevant paragraphs of the order of learned Single Judge is reproduced as under:

“Having heard the rival submissions of the parties and taking into consideration the materials available on record, it is clear that while passing the order of punishment the Disciplinary Authority failed to take into consideration the reply filed by the petitioner. It is has rightly been submitted by the petitioner that recording of reason is a principle of natural justice.

Order imposing punishment does not disclose at all any application of mind as to why petitioner’s representation against finding recorded by Inquiring Authority have not been accepted. It is mandatory for the Disciplinary Authority to deal with the explanation filed by the delinquent while exercising power under Disciplinary Rules. Non compliance of it will result into violation of natural justice and breach of statutory provision itself.

Since the petitioner has retired from service in the year 2017 and minor punishment has been imposed against him, this court holds that it would not be proper, at this stage, to remit the matter back to the Disciplinary Authority to



consider the matter afresh.

In the result, this writ application is allowed and the impugned orders as contained in memo No. 1429 dated 24.12.2012 (Annexure-2 to the writ petition) and in memo No. 797 dated 01.04.2015 (Annexure-4 to the writ petition) are hereby set aside. The petitioner is, accordingly, also held to be entitled to the consequential benefits, if any.”

5. Learned counsel for the appellant submits that an explanation had been sought from the respondent on 04.02.2010, in pursuance to which the respondent had submitted his reply dated 25.08.2010. The said reply/explanation had been examined at government level, and after considering such reply the department had passed the order dated 24.12.2012. The respondent was alleged to be negligent in his act, and committed lapses in his supervision.

6. Learned counsel for the appellant further submits that orders of the department were passed after exercising due process of departmental proceeding in due observance of the principles of natural justice.

7. Upon perusal of orders of the department, it is evident that the explanation which was submitted by the respondent (Writ Petitioner) on 25.08.2010, has not been considered in the order imposing punishment dated 24.12.2012.



The explanation submitted had not been discussed by the authorities, and no specific finding on the said explanation was given. As such, it is evident that the concerned authorities had not applied their minds with respect to the explanation given by the respondent. Thus, such non-consideration of the reply/explanation submitted by the respondent would amount to violation of Principles of Natural Justice.

8. Further, the appellants have been unable to show that the explanation submitted by the respondent was considered by the concerned authorities. No relevant documents or materials have been brought on record to show that such reply of the respondent was considered. Thus, the appellants have been unable to dislodge the findings of the learned Single Judge.

9. The punishment of withholding two increments is non-cumulative, and is a minor punishment. Since the writ petitioner has superannuated from the service way back in the year 2017, in that view of the matter, it seems inappropriate to remand the matter to the disciplinary authority for fresh consideration.

10. In view of the aforesaid, this Court proceeds to examine the matter within the limited scope of interference available in an *intra* court appeal. It is well settled that in



exercise of jurisdiction under Letters Patent, this Court does not sit as a court of appeal over findings of fact unless the same are shown to be perverse or based on no evidence. At this juncture, it is pertinent to take note of the judgement rendered by the Hon'ble Supreme Court while deciding the case of **Umabai v. Nilkanth Dhondiba Chavan**, reported in **(2005) 6 SCC 243**, wherein following observation was made:

“52. It may be, as has been held in Asha Devi [(1974) 2 SCC 492] that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.”

11. It is also relevant to take note of the Judgment of the Hon'ble Supreme Court in **Narendra & Co. (P) Ltd. v. Workmen**, reported in **(2016) 3 SCC 340**, wherein the following observation was made:

“5.Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not



disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

12. Considering the fact that the principles of natural justice were not followed while passing the order imposing punishment, and in view of the discussions made above, we find no perversity or illegality in the order passed by the Writ Court.

13. The order of the learned Single Judge stands affirmed, and the directions made therein shall follow.

14. Accordingly, the present *intra* court appeal stands dismissed.

15. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

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