

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.861 of 2019

In

Civil Writ Jurisdiction Case No.7348 of 2015

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Ashok Kumar Singh S/o Ram Ekbal Singh resident of village- Pachlakh, P.S.- Parsa Chapra, District- Chapra (Saran), Retired from the post of Executive Engineer, Rural Works Department, Advance Planning Division-1, Government of Bihar, Patna.

... ... Appellant.

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Joint Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Special Secretary, Rural Works Department, Government of Bihar, Patna.
5. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
6. The Chief Engineer (Headquarter), Rural Works Department, Government of Bihar, Patna.
7. The Superintending Engineer, Rural Works Department, Works circle, Patna.
8. The Executive Engineer (Vigilance), Rural Works Department, Government of Bihar, Patna.

... ... Respondents.

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Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 – Disciplinary Proceeding - Rule – 19- Rule 19(1)(b) is in respect of holding a certain inquiry proceedings under Sub-rules (3) to (23) of Rule-17 – delay in submission of record – appellant not the custodian of record – custodian of the record was on deputation to election duty – beyond appellants control – disciplinary authority proceeded to impose minor penalty with resorting to Rule 19(1)(b) – order set aside – LPA allowed. (Reliance : O.K Bhardwaj Vs. The Union of India and others (2001) 9 SCC 180).

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7. The Superintending Engineer, Rural Works Department, Works circle, Patna.
8. The Executive Engineer (Vigilance), Rural Works Department, Government of Bihar, Patna.

... .. Respondents.

Appearance :

For the Appellant	:	Mr. Amit Shrivastava, Senior Advocate. Mr. Girish Pandey, Advocate. Mr. Uma Shankar Sharma, Advocate. Mr. Shiv Kumar Prabhakar, Advocate.
For the State	:	Mr. Manish Kumar, AC to AAG-6 (Ex.)/ In-charge- AAG-5.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 01-03-2024

In the present L.P.A., the appellant has assailed the
order of the learned Single Judge dated 14.05.2019 passed in



C.W.J.C. No.7348 of 2015.

2. The appellant while working as Executive Engineer was subjected to disciplinary proceedings under Rule 19 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (For short “the Rules 2005”). On 26.07.2011, in seeking appellant’s explanation, appellant had submitted his explanation on 01.08.2011. Thereafter, the disciplinary authority proceeded to impose penalty of Censure and withholding two increments without cumulative effects on 09.05.2013.

3. Feeling aggrieved and dissatisfied with the imposition of penalty order by the disciplinary authority, the appellant preferred revision/review and it was rejected on 28.05.2015. Thus, the appellant has filed C.W.J.C. No.7348 of 2015 and it was dismissed on 14.05.2019. Hence the present L.P.A.

4. Learned Senior counsel for the appellant submitted that the learned Single Judge has committed error in not taking note of specific contention raised in reply to the charge dated 01.08.2011 and not apprised to the extent that there is non-application of mind on behalf of both the disciplinary authority and revisional authority while passing orders on



09.05.2013 and 28.05.2015. It is also submitted that if there are any certain disputed issues, in such circumstances, the disciplinary authority should have resorted to holding of inquiry in the light of Rule 19(1)(b) of the Rules 2005. It is submitted that the specific plea of the appellant in not furnishing the demanded documents on behalf of the Special Secretary through the Engineer-in-Chief, the same has not been appreciated. In fact, the appellant has specifically contended that the custodian of those records was on deputation to election duty. Therefore, it was beyond the control of the appellant in providing the demanded documents on behalf of the Special Secretary and Engineer-in-Chief. The same has not been taken note of and appreciated by the disciplinary authority/revisional authority and so also by the learned Single Judge.

5. Per contra, the learned counsel for the State resisted the aforementioned contentions and supported the order of the learned Single Judge dated 14.05.2019 passed in C.W.J.C. No.7348 of 2015 and submitted that the appellant was subjected to disciplinary proceedings under Rule 19 of the Rules 2005 and it was only for imposition of minor penalty. In respect of imposition of minor penalty is concerned, disciplinary authority can resort only to the extent of issuing show cause notice along



with article of charges and seeking explanation of the concerned Government Servant and, thereafter, proceed to pass order of punishment after due consideration of explanation of such Government Servant. The same has been resorted, therefore, the disciplinary authority has not invoked Rule 19(1)(b) of the Rules 2005. Hence, there is no infirmity in the order of the penalty, revisional order and order of the learned Single Judge. Hence, the present L.P.A. is liable to be dismissed while affirming the order of the learned Single Judge dated 14.05.2019 passed in C.W.J.C. No.7348 of 2015.

6. Heard the learned counsel for the respective parties.

7. Before advertng to the facts of the case, it is necessary to reproduce Rule 19 of the Rules 2005, it reads as under:

“19. Procedure for imposing minor penalties. - (1) Subject to the provisions of sub-rule (3) of Rule 18, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (v) of Rule 14 shall be made except after-

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed



to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings of each imputation of



misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.”

8. Rule 19 of the Rules 2005 is relating to procedure for imposing minor penalties. The disciplinary authority has invoked Rule 19 of the Rules 2005 in the guise of imposition of minor penalties on the appellant. He has issued show cause along with the charge on 26.07.2011. The appellant had submitted his explanation on 01.08.2011. Thereafter, the disciplinary authority proceeded to impose penalty of Censure and withholding of two increments on 09.05.2013. Further, it was affirmed in the revision/review. It is to be noted that Rule 19(1)b) of the Rules 2005 is in respect of holding a certain inquiry proceedings under sub-rules (3) to (23) of Rule 17. The aforementioned Rule is attracted in the present case for the reasons that the appellant had submitted his explanation on 01.08.2011 as to why there is delay in submission of records demanded by the Special Secretary through Engineer-in-Chief. His specific contentions are as under:

- “1. Haridas Bigha Khushrupur Road Katauna Dharamshala Chamartoli Path under Work Division, Patna Year regarding the 2006-07 Agreement No.46F2/2006-2007, he was informed by the office letter no.1949 dated 20.05.2011 in the context of the



information sought by the Engineer-in-Chief, Rural Works Department's Letter No.6615 dated 19.05.2011. For easy reference, photocopy of those letters are attached in which it was mentioned that the concerned employee is on deputation for Panchayat elections. The documents will be made available soon after his arrival. In this regard, on 19.05.2011 itself, the undersigned had telephoned the Engineer-in-Chief in the evening and informed him with the complete facts. He had said that he is getting the relevant file searched.

2. Vide Officer Letter No.1984 dated 26.05.2011, the Engineer-in-Chief, Rural Works Department was again informed about the actual situation. Photocopy of those letters are attached for easy reference.
3. Earlier vide the Engineer-in-Chief's Letter No.II/Pra.-01-178/08 4496 dated 16.12.2008, a report was called for. The full report of which was submitted to him and the Superintending Engineer vide this office's Letter No.4315 dated 18.12.2008."

9. Reading of paragraph-1 of the aforementioned explanation of the appellant, it is evident that the appellant has taken contention that he could not furnish the requisite documents demanded by the Special Secretary through the Engineer-in-Chief as it was with the concerned worker/clerk who was custodian of those records and he was on deputation to



election duty. To that extent, there is a disputed issue as to why the appellant could not furnish the demanded documents within the time limit stipulated by the Special Secretary/Engineer-in-Chief. In respect of verification of this contention of the appellant to the extent that he was not the custodian of the record and the custodian of the record was on deputation to election duty and it was beyond his control was required to be enquired into under Rule 19(1)(b) of the Rules 2005. Without resorting to the aforesaid provision, the disciplinary authority proceeded to impose minor penalty. The rule/provision has not been appreciated by the disciplinary authority, revisional authority and learned Single Judge. Thus, the learned Single Judge has committed error in not noticing the relevant aforementioned provision of law read with the appellant's explanation to the charge memo.

10. The Hon'ble Supreme Court in the case of **O.K. Bhardwaj Versus Union of India and others** reported in **(2001) 9 SCC 180** has held that in respect of departmental inquiry for imposition of penalty is concerned, if there is any disputed facts, in such circumstances, the departmental inquiry is mandatory.

11. Taking note of the aforementioned statutory



Rules and principle laid down by the Hon’ble Court in the
aforementioned decision, the appellant has made out a case so
as to interfere with the order dated 09.05.2013 of the
disciplinary authority, order dated 28.05.2015 of the revisional
authority/reviewing authority and the order of the learned Single
Judge dated 14.05.2019 passed in C.W.J.C. No.7348 of 2015.
Accordingly, aforementioned orders are set aside and the writ
petition (C.W.J.C. No.7348 of 2015) stands allowed.
Accordingly, the present L.P.A. stands allowed.

12. The concerned Respondent-State is hereby
directed to restore withheld increments and refix pay and
pension and disburse difference of amount within a period of 3
months from today.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2024.
Transmission Date	NA

