

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10846 of 2011

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Ajay Kumar Singh son of Sri Vijay Pratap Singh Resident of Mohalla Vijay
Nagar, P.S.-Danapur, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Bihar, Patna
3. The Special Secretary, Road Construction Department, Bihar, Patna
4. The Deputy Secretary, Road Construction Department, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhu Nath Pathak, Advocate
For the Respondent/s	:	Mr. Rajeev Kr. Singh, GP15

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

Date : 3-11-2025

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant writ application
praying for quashing the order of punishment contained in letter
dated 31.5.2011, issued under the signature of the Special
Secretary, Road Construction Department, Patna, whereby the
petitioner has been awarded the punishment of “censure”, which
shall be effective for three years and withholding of four annual
increments with non-cumulative effect.

3. The facts in brief are that the petitioner, while posted as
Executive Engineer (Mechanical Division), Muzaffarpur, was



given the additional charge of Mechanical Division, National Highway Division, Muzaffarpur. By office order contained in memo dated 12.5.2009, the Hot Mix Plant, Khagaul of Tantiya was attached with the N.H. (Mechanical Division), Muzaffarpur.

4. By order dated 29.8.2009 one Subhash Kumar Das, Time Keeper, was deputed at the Hot Mix Plant, Khagaul. He did not comply with the directions contained in the order dated 29.8.2009 and instead got a complaint filed through his wife on 31.8.2009 making allegations of harassment against the petitioner. The complaint was sent to the Superintending Engineer, National Highway Road Circle, Patna, for inquiry who having inquired into the matter submitted his enquiry report on 17.11.2009, finding the allegations levelled against the petitioner to be incorrect and also recommended that a departmental proceeding be initiated against Subhash Kumar Das.

5. It is submitted by learned counsel for the petitioner that the allegations levelled against the petitioner in the complaint were mainly two fold i.e the application made by Subhash Kumar Das on 17.08.2009 for grant of paternity leave was not accepted by the petitioner and further the order of deputation of Subhash Kumar Das to the Hot Mix Plant at Khagaul, was



illegal, the same not being within the division of the petitioner. On the inquiry report having been submitted finding the allegations to be incorrect and false the same was forwarded by the Chief Engineer to the Deputy Secretary, Road Construction Department, Bihar, Patna on 15.12.2009.

6. It is further submitted that, even without waiting for the inquiry report of the Superintending Engineer, the Deputy Secretary issued a show-cause notice dated 13.10.2009 to the petitioner, to which the petitioner replied on 19.10.2009 controverting the allegations levelled against him. By order contained in letter dated 23.2.2010 the order of punishment was passed against the petitioner as stated above.

7. Learned counsel for the petitioner submits that the order of punishment was challenged in CWJC No. 6844 of 2010, which was disposed of by order dated 3.8.2010 giving liberty to the petitioner to represent before the Secretary, Road Construction Department with a direction to the respondents concerned to dispose of the representation expeditiously. The petitioner filed his representation before the Secretary, Road Construction Department and not getting any response thereto, filed another representation before the Chief Minister, who happens to be the final authority in the case of Class-I



Government servant. Not having received any relief, the instant writ application has been filed for the relief stated above.

8. It is further submitted by learned counsel for the petitioner that since the petitioner had been given the additional charge of the N.H., Mechanical Division, Muzaffarpur, and the Hot Mix Plant, Khagaul, Danapur, having been attached with the said Mechanical Division, Muzaffarpur, the petitioner had powers to transfer and to post persons within his division from Muzaffarpur to Patna and there was no illegality in the posting of Subhash Kumar Das at Khagaul.

9. It was further submitted that so far as refusal to grant paternity leave to Subhash Kumar Das is concerned, the same was not granted in view of the order dated 10.8.2009 issued by the District Magistrate, Muzaffarpur. For these reasons, in the enquiry conducted, the charges levelled against the petitioner were not found to be correct, however the respondent proceeded to illegally pass the order of punishment dated 31.5.2011 impugned in the instant application. The same is not sustainable and the order impugned is fit to be set aside. Learned counsel further submitted that the petitioner being an Executive Engineer and belonging to Group-A service in terms of Rules 6 and 7 of the Bihar Government Servants (Classification, Control



and Appeal) Rules, 2005 ('the Rules' in short) a show cause notice was required to be issued by the Government and the same having been issued in the instant case by the Deputy Secretary, Road Construction Department, Bihar, the same was not sustainable and the writ application was fit to be allowed on this ground also. Reliance is placed by learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court in the case of **Union of India v. B.V. Gopinath; (2014) 1 SCC 351**.

10. Learned counsel for the petitioner further submits that Rule 19(1)(a) of the Rules provides that before the disciplinary authority chooses to impose a minor penalty on the delinquent, he shall intimate in writing to the delinquent the proposed action to be taken against him together with the grounds for the misconduct or misbehaviour on which the action is proposed to be taken. It is submitted that the show-cause notice dated 13.10.2009 (Annexure-9) does not fulfill the above requirements and thus the same being contrary to the Rules, the order of punishment which is based on the said show cause notice cannot be sustained. For all these reasons, it is submitted that the application be allowed.

11. The application was opposed by learned counsel for the respondents-State of Bihar. With reference to the averments



made in the counter affidavit, it is submitted that a complaint was filed by the wife of Subhash Kumar Das on 31.08.2009, making allegations of harassment against the petitioner of rejecting his application for grant of paternity leave and illegally deputing him on the post of Night Guard at the Hot Mix Plant in Khagaul. On inquiry having been conducted, the petitioner was asked to submit his explanation. After considering the explanation submitted by the petitioner, having found the allegations levelled against him to have been proved, the order of punishment was passed, which has been challenged in the instant application. It is further submitted that there is no procedural irregularity in the conduct of the proceeding against the petitioner and before passing of the order of punishment the petitioner was afforded full opportunity to put forward his case at each stage. It is thus submitted that there is no merit in the instant writ application and the same be dismissed.

12. Heard learned counsel for the parties and perused the material on record.

13. The relevant facts in brief are that a complaint was filed by the wife of Subhash Kumar Das on 31.8.2009 making allegations of harassment against the petitioner, who was then posted as an Executive Engineer, N.H. Mechanical Wing (NH



Division), Muzaffarpur. The allegations levelled in the complaint were mainly two fold namely, that the petitioner had illegally refused paternity leave for which Subhash Kumar Das had applied on 17.8.2009 and further that by order dated 29.8.2009 he had illegally been deputed at Hot Mix Plant in Khagaul.

14. With respect to the first allegation of denial of paternity leave, it is the case of the petitioner that pursuant to the order dated 18.8.2009 issued by the District Magistrate, Muzaffarpur, the leave of all the officers and staffs posted in Muzaffarpur stood cancelled in view of the Elections of the Vidhan Sabha and the PACS elections as also the relief work being carried out in the flood effected area. The order further provided that in most urgent cases leave could be granted with prior permission of the District Magistrate. There being no sanction nor prior permission of the District Magistrate having been obtained by the petitioner, no leave could be granted to him.

15. Further with respect to deputation of the petitioner at the Hot Mix Plant in Khagaul it was submitted that the petitioner who was posted as an Executive Engineer was given additional charge of the Mechanical Division, N.H. Division,



Muzaffarpur and further by order contained in memo dated 12.5.2009 issued by the Chief Engineer, the Hot Mix Plant at Khagaul, was attached in National Highway (Mechanical Division), Muzaffarpur. Thus the same were within the jurisdiction of the area under charge of the petitioner and no illegality was committed by the petitioner in deputing the Subhash Kumar Das at Khagaul.

16. It would be relevant to mention here that on the complaint having been filed by the wife of Subhash Kumar Das the matter was inquired into by the Superintending Engineer, National Highway Road Circle, Patna who having considered all the materials including the show cause filed by the petitioner submitted his inquiry report dated 17.11.2009 not only finding the allegations against the petitioner to be false and incorrect but also recommending departmental proceeding against Subhash Kumar Das for having used objectionable language against the petitioner. It further transpires from the record that inspite of the finding by the Superintending Engineer in his enquiry report, without waiting for the same the Deputy Secretary, Road Construction Department proceeded to issue show cause notice on 13.10. 2009 asking him to file his reply within a period of 7 days. It is with respect to this show cause notice that the learned



counsel for the petitioner has made two fold submissions which are dealt with hereinbelow.

17. It is firstly submitted by learned counsel for the respondents that in view of Rules 6 and 7 of the Rules the petitioner being an Executive Engineer and belonging to Group-A service, show cause notice was required to be issued by the Government and could not have been issued by the Deputy Secretary of the Road Construction Department. Further Rule 15 provides that Government may impose any of the penalties specified in Rule 14 on any Government Servant. Rule 16 states that the Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government may institute Disciplinary Proceeding against any Government Servant.

18. So far as the instant case is concerned, the show cause notice at the first instance was issued by the Superintending Engineer and subsequently by the Deputy Secretary of the Road Construction Department, Bihar. Nothing has been brought on record by the respondents to show that the Government had issued a valid delegation order authorizing them to issue show cause notice to the petitioner, a Group-A officer.



19. The Court finds merit in the submissions made by learned counsel for the petitioner and in support of the same reference may be made to the judgments of this Court as also the Hon'ble Supreme Court in the case of **Dinesh Prasad Singh versus State of Bihar; 2019 (3) PLJR 687, State of Bihar versus Arvind Kumar; 2013 (4) PLJR 482** and **Union of India versus B.V. Gopinath; (2014) 1 SCC 351.**

20. The requirements of Rule 6 of the Rules not having followed and the proceedings against the petitioner a Group-A officer having been initiated by subordinate authority and not with the approval of the State Government, the initiation of the proceedings itself is without jurisdiction and not sustainable in law. Consequently the order of punishment is fit to be set aside on this ground.

21. It was further contended by learned counsel for the petitioner that in the inquiry conducted by the Superintending Engineer, in the enquiry report dated 17.11.2009 allegations against the petitioner were found to be incorrect and false. However, the Deputy Secretary, Road Construction Department proceeded to issue a show cause notice dated 13.10.2009 asking the petitioner to file his reply within a period of 7 days and on the petitioner filing his reply proceeded to pass the order of



punishment. Referring to the show cause notice it was submitted that the same does not fulfill the requirements of Rule 19(1)(a) of the Rules. This Court has perused the contents of the show cause notice dated 13.10.2009 which shows that the same does not intimate the petitioner in writing the proposed action to be taken against him as also the grounds of misconduct on which the action is proposed to be taken. In terms of Rule 19(1)(a), even in case of imposition of minor penalty, the petitioner was required to be told of the action that the disciplinary authority proposed to take against him under the Rules and the same not having been done as shown from the contents of the show cause notice dated 13.10.2009, in view of the judgment of this Court dated 22.8.2017 passed in CWJC no.5327 of 2016 (Indrajeet Kumar Arya versus State of Bihar & Ors.) the order of punishment is not sustainable and fit to be set aside.

22. In view of the facts and circumstances stated above, the order of punishment dated 31.05.2011 issued under the signature of the Special Secretary, Road Construction Department, Government of Bihar, Patna, is hereby quashed and set aside. The petitioner is held entitled to all consequential benefits denied to him as a result of the impugned order.



23. The writ application is allowed.

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	13.10.2025
Uploading Date	4.11.2025
Transmission Date	

