

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1207 of 2021

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Ashok Kumar, Son of Late Sheo Ghahan Ram, Resident of Mohalla-Dharhara, P.S.-Ara, Distirct-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Bihar, Patna.
3. The Secretary, Rural Works Department, Bihar, Patna.
4. The Engineer-in-Chief (North), Water Resources Department, Bihar, Patna.
5. The Under Secretary, Water Resources Department, Bihar, Patna.
6. The Under Secretary, Rural Works Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitaranjan Sinha, Sr. Adv
Mr. Prabhu Nath Pathak, Adv
For the Respondent/s : Mr. Sumeet Kumar, AC to AG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 17-11-2022

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

2. The petitioner has been proceeded against by a charge memo dated 04.01.2012. The allegation is that while he was posted as Executive Engineer in Tirhut Canal Division at Ratwara, Muzaffarpur, he has not properly maintained the canal leading to a breach at Point-722 (left) on 22.09.2011, which has occurred because the petitioner failed to stop the seepage/piping from the canal. It has also been alleged that strength of the canal was compromised and, therefore, the petitioner, being Executive



Engineer, has been proceeded against for improper maintenance in spite of allocation of adequate funds for the same.

3. The petitioner took a stand before the authority that there was no weakness in the structure or deficiency in maintenance. The petitioner was taking all steps required for the same.

4. It is submitted that anti-social elements have actually breached the canal and, therefore, the petitioner cannot be held responsible. The Inquiry Officer has after thorough inquiry arrived at the following conclusions:-

"उपरोक्त तथ्यों से स्पष्ट होता है कि नहर बाँध अपनी कमजोर स्थिति के कारण नहीं टूटा बल्कि काटा गया है। नहर के कटान भराई में अलग से राशि नहीं लगा है। बल्कि कार्यरत संवेदक से भराई कार्य सम्पन्न कराया गया।

निष्कर्ष:- आरोपित के बचाव बयान एवं उपरोक्त तीनों खण्डों की अलग अलग समीक्षा से स्पष्ट होता है कि श्री अशोक कुमार द्वारा नहर संचालन में न तो लापरवाही बरती गयी है और न घोर शिथिलता बरती गयी हैं श्री कुमार को आरोपों से मुक्त करने की अनुशंसा की जाती है।"

5. The Inquiry Officer has accepted the petitioner's reply and exonerated him from the charges.

6. It is thereafter that the disciplinary authority has written to the petitioner, under communication dated



30.04.2013, differing with the findings of the Inquiry Officer. The petitioner thereafter has submitted his reply reiterating his stand taken earlier before the Inquiry Officer.

7. As a result of the aforesaid consideration, the petitioner has been visited with the punishment dated 23.10.2013 of censure for the period 2011-12 and withholding of two annual increments with non-cumulative effect.

8. Benefits other than subsistence allowance for the period of suspension has also been denied by order dated 24.05.2018. The petitioner has also prayed for quashing of this order.

9. The learned senior counsel for the petitioner submits that the findings are unsustainable as the disciplinary authority has recorded a finding that breach of the canal was on account of seepage/piping, although while communicating his disagreement with the inquiry report, no such issue has been raised in the communication dated 30.04.2013. In fact in the communication dated 30.04.2013, the disciplinary authority has recorded that even if the canal had been breached by anti-social elements then also the petitioner is required to be proceeded against as he has failed to take action by reporting of such breach and follow up action diligently. The said issue has been



made a point of distinction in the second show cause, though there was no such allegation in the original charge memo.

10. The ultimate finding of the disciplinary authority recorded in the order of punishment dated 23.10.2013, however, again falls back on the initial allegation that due to improper maintenance seepage/piping, the breach has occurred. This finding is at variance with the reasons assigned for differing with findings of the Enquiry Officer regarding charges not being proved. The entire disciplinary proceeding, therefore, has been conducted in a most arbitrary and unfair manner. The disciplinary authority has apparently proceeded on the preconceived objective of holding the charges proved.

11. The communication of the disciplinary authority, purporting to differ with the findings of the inquiry officer dated 30.04.2013, is also without reference to any material in the course of inquiry so as to justify the point of distinction.

12. In view thereof, this Court would find that the communication of disagreement with findings of Inquiry Officer is contrary to the Rule 18(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Rule 18(2) reads as follows:

“18(2) 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. From bare perusal of the rule itself, it is apparent that the Disciplinary Authority is required to record its reasons for disagreement and also record its own findings on the charges only if the evidence on the record is sufficient for the purpose.

14. This Court would find from the communication dated 30.04.2013 that no evidence, whatsoever, has been referred to, let alone sufficient evidence. There is, therefore, procedural breach of Rule 18(2) in communicating the point of distinction. The findings as a result, therefore, are unsustainable on this ground itself.

15. The Court, however, would find that the finding is also unsustainable for another reason being the fact that the same is at variance with and not based on the same premise on which the point of distinction has been communicated to the petitioner under letter dated 30.04.2013.

16. The order of punishment issued by the disciplinary



authority, dated 23.10.2013 therefore, in view of the above-noted procedural violation is clearly unsustainable. The consequential order dated 24.05.2018, therefore, must also collapse. The order dated 05.08.2016 passed by the Reviewing Authority affirming the illegal findings, therefore, is also unsustainable, and quashed.

17. The petitioner is thus found to be entitled to consequential benefits on account of quashing of the impugned order.

(Madhuresh Prasad, J)

SUMIT/-

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