

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12132 of 2013

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Awadh Tiwari Son Of Late Keshwar Tiwari Resident Of Village - Jaipur, P.S.
- Mehandiya, District - Arwal

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, Water Resources Department, Government Of Bihar, Patna
3. The Joint Secretary, Water Resources Department, Government Of Bihar, Patna
4. The Deputy Secretary, Water Resources Department, Government Of Bihar, Patna
5. The Engineer-In-Chief Middle, Water Resources Department, Government Of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
Ms. Shilly Kumari, Advocate

For the Respondent/s : Mr. Sangha Mitra Ghosh, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT/ORDER

14-03-2023

Heard the parties.

2. The present writ application has been preferred against the order dated 20.03.2013 bearing Memo No. 374 passed by Engineer-In-Chief (Central), Water Resources Department, Government of Bihar, Patna as contained in Annexure-17 whereby punishment of stoppage of 5% pension has been imposed upon the petitioner in a departmental proceeding concluded under Rule 43(b) of the Bihar Pension Rules.

3. At the relevant point of time in the year 1989, the petitioner was posted as Junior Engineer in Minor



Distributory Division-IX, Ghatshila Camp, Galudih. An agreement was entered with six different firms (one of them is M/s Barauni Tiles) for supply of PCC tiles. The petitioner was directed to receive tiles from M/s Barauni Tiles. He received sub-standard tiles from the contractor inasmuch the said tiles were not as per specification stipulated under the contract.

4. The petitioner entered the bill against the supply of the said tiles in the measurement book without waiting for the quality test report of those tiles. On the basis of entry made by the petitioner in the measurement book payment was made to the contractor. As such, the petitioner caused a huge financial loss to the Government and accordingly, vide Resolution No. 1691 dated 17.07.1991, the Water Resources Department took a decision to initiate departmental proceeding against the petitioner under Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930. The proceeding was, later one, converted into Rule 55A of Civil Services (Classification, Control and Appeal) Rules on 02.11.1992.

5. The memo of charge was served upon the petitioner, *inter alia*, alleging that the petitioner during his tenure received the sub-standard tiles supplied by the contractor



for the purpose of lining of the canal. He received the tiles supplied by the contractor having 1:2.97 ratio of cement and sand instead of specified ratio of cement and sand of 1:2. A sum of Rs. 11,73,000/- was paid to the contractor against the sub-standard tiles which caused loss to the State exchequer to the aforesaid extent.

6. The second charge was that during his tenure, the petitioner was negligent and casual in his duty which caused financial loss to the State revenue which is punishable under Clause 265 of the Bihar Financial Rule and Clause 243 of the Bihar Public Works Accounts Code. The petitioner in order to provide financial gain to the contractor did not get quality control tested of the material supplied as per the agreement and without quality control test prepared the bill, facilitating the payment of amount to the contractor.

7. The petitioner filed his reply to the show-cause on 28.11.1992 and upon consideration of the same the petitioner was awarded a punishment *vide* Annexure-9 whereby the promotion for the next ten years was stopped and a sum of Rs. 1,46,625/- was ordered to be recovered from him.

8. Aggrieved by the order of punishment, the petitioner filed CWJC No. 1015/2000 before this Court. The



said writ application was disposed of by order dated 17.02.2006 whereby the order of punishment was quashed and a direction was issued to refund the recovered amount.

9. The Respondents preferred an LPA No. 790/2007 against the said order. The LPA was dismissed *vide* order dated 18.08.2010 with liberty to the State that “*if the law permits the appellants can proceed against the concerned employee in accordance with law*”. The Respondent No. 5, Engineer-in-Chief decided to proceed against the petitioner under Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 *vide* order dated 18.01.2011 contained in Memo No. 78 (Annexure-13). During pendency of the said proceeding the petitioner superannuated on 31.05.2011 and accordingly, the proceeding was converted into a proceeding under Rule 43 (b) of the Bihar Pension Rules *vide* departmental order contained in Memo No. 860 dated 13.07.2011.

10. The memo of charge having the aforesaid charges as stated hereinabove was again served upon the petitioner. The petitioner participated in the proceeding. The Enquiry Officer exonerated the petitioner from the charges. Enquiry report was examined at the departmental level and



having disagreed with the finding and conclusion of the Enquiry Officer, the second show-cause was issued to the petitioner vide letter no. 683 dated 26.06.2012 stating therein points of difference/disagreement.

11. The petitioner submitted reply to the second show-cause notice and after considering the same the disciplinary authority passed the order of punishment withholding 5% of the pension.

12. Mr. Shahi, learned counsel for the petitioner vehemently argued that the LPA preferred by the State of Bihar was dismissed by this Court with an observation that "*if the law permits the appellants can proceed against the concerned employee in accordance with law*". But there is no such law or the Rules which permit the authority to proceed departmentally against the petitioner again. He relied upon Rule 9(5) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 to argue that this Rule does not permit initiation of the departmental proceeding against the petitioner. He further submitted that the analysis report of Khagaul Laboratory shows the ratio of cement and sand as 1:2.97 and 1:2.23 in place of 1:2. However, discrepancy found by the Laboratory in the ratio comes under the permissible limit as provided in the



Government Instruction of Cabinet (Vigilance) Department dated 06.07.1992 *vide* Memo No. 1045.

13. On the other hand, learned counsel for the State submitted that the petitioner received sub-standard tiles which were not as per specification stipulated under the contract. The petitioner entered the bill for supply of the said tiles in the measurement book without waiting for the quality report and on that basis the payment was made to the contractor causing financial loss of Rs. 11,73,000/- to the Government. He further argued that the departmental proceeding was initiated during service period of the petitioner as per the liberty granted by this Court in LPA No. 790/2007. The order of punishment has been passed adhering to the principle of natural justice as well as procedural formalities and there is no error in the decision making process.

14. I have heard learned counsel for the parties and have gone through the materials available on record. The memo of charge was served upon the petitioner for causing financial loss to the State exchequer and for being negligent and casual in preparation of bill facilitating the payment to the contractor. The disciplinary authority differing with finding of the Enquiry Officer issued the show-cause on the points of



disagreement specifically stating the points of difference in the show-cause giving opportunity to the petitioner to reply upon the same. The main thrust of the argument of the petitioner is that the law does not permit the respondents to initiate the fresh departmental proceeding and in support of his argument the petitioner relied upon Rule 9(5) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. I have carefully examined Rule 9(5) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 which is in part-IV of the said Rules dealing with suspension. Upon perusal of the same, I do not find that the Rule 9(5) prohibits the authority to start departmental proceeding afresh. In fact, this Rule contemplates that where the court has passed an order setting aside the penalty purely on technical ground without going into the merits of the case, on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

15. In the present case, the Division Bench of



this Court in LPA No. 790/2007 has given liberty to the Respondents-authority to initiate a fresh proceeding against the petitioner in accordance with law and on the basis of the said liberty a fresh proceeding under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 was initiated against the petitioner after serving a fresh memo of charge upon him. No relevant rule and or law has been produced before me by the petitioner which prohibits or restrains the disciplinary authority to initiate a fresh proceeding against the delinquent after liberty having been granted by the writ court to proceed afresh in accordance with law. The first order of punishment was quashed by this Court on the technical ground that stoppage of promotion for ten years could not be awarded by taking recourse to Rule 55A of the Civil Services (Classification, Control and Appeal) Rules, 1930 and in that background the Division Bench granted liberty to the respondents to proceed against the petitioner afresh in accordance with law. As such, I do not find any force in the argument advanced by the petitioner.

16. The second leg of the argument is that the ratio of cement and sand as per the analysis report of the Laboratory though was in excess but the same was under



permissible limit as per Government Instruction of Cabinet (Vigilance) Department dated 06.07.1992 *vide* Memo No. 1045.

17. Upon perusal of the said instruction, it transpires that the said instruction deals with permissible limit of difference in the ratio of cement and sand to the extent of 15% to 20% where mortar or concrete is prepared by hand mixing process. The PCC tiles are not prepared by hand mixing process but the same is prepared by machine mixing. In the present case, the tiles supplied were not meeting the specification prescribed in the agreement, hence, the said instruction is not applicable in the present case.

18. Moreover, the Court while testing the validity of the order of the punishment is required to see the flaw into decision making process and cannot sit upon the decision itself as an appellate authority. Even assuming the aforesaid instruction of Cabinet (Vigilance) Department dated 06.07.1992 *vide* Memo No. 1045 is applicable in the case of the petitioner in relation to the permissible limit of difference in ratio up to 25% but the difference of ratio found by the Laboratory in the present case to the extent of 1:2.97 is more than the permissible limit of 25%.

19. The petitioner has not pointed out any



procedural infirmity and or violation of principle of natural justice in the departmental proceeding.

20. In view of the aforesaid discussions, I come to the conclusion that the impugned order of punishment does not require any interference by this Court. Consequently, the present writ application having no merit is dismissed.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
CAV DATE	09.02.2023
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