
(2010) 09 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 1892 of 1998

Rajendra Prasad Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2011) 1 PLJR 95

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the parties.

2. Petitioner is a dismissed Junior Engineer. The order of the Respondent State imposing such a punishment is dated 23.1.1998 and forms part of the record as Annexure-1. This is the impugned order in the present writ application.

3. It may be recorded that this is not the first visit of the Petitioner to the Court because the Petitioner stood dismissed twice over by the Respondents for the charges which was established against him but on both the occasions the High Court interfered with the order for one technical reason or the other as would be evident from the pleadings and Annexures-3 and 9 which have been annexed by the Petitioner in the present writ application.

4. Petitioner was appointed as a Junior Engineer in the Irrigation Department some time in the year 1979. In 1985 his service was transferred to Minor Irrigation Department and came to be posted in the Minor Irrigation, Sub-Division of Kurdeg in the Simdega Division in the district of Gumla. Petitioner joined the said post and took charge from one Ramakant Pathak on 11.5.1986. Petitioner was involved in the construction of a Minor Irrigation Project which included construction of a dam and spillway. Project was known as Ranighagh Medium Irrigation Project. Work was completed during the period of posting of the Petitioner but the part of the dam was washed away in the night of 29.8.1987 which led to initiation of a departmental proceeding. Charges were

drawn up against the Petitioner, as would be evident from the charge-sheet contained at page 33 of the writ application.

5. The charge states that the irrigation project was to be completed on estimated cost of 16.4 lakhs and came to be completed in February, 1987 but in the night of 29.8.1987, portion of the spillway as well as the dam got washed away. As per the estimate the spillway was to have a length of 125 feet whereas the actual construction was found upto 100 feet. Quality of concrete and mortar including the cement used in the said construction was not adequate, leading to the said disaster. Petitioner was not the only person, who was proceeded in the matter. All those engineers, who were associated with the said project, came to be charge-sheeted and appropriate order of punishment came to be imposed upon them.

6. In the present round of litigation, after the order contained in Annexure-9 was passed by the High Court, a notice of disagreement came to be issued by the disciplinary authority which is Annexure-10 to the writ application. Petitioner's reply to the said notice is Annexure-11 and the punishment order of dismissal is Annexure-1.

7. Submission of learned Counsel for the Petitioner on the punishment order is that a look at the enquiry report contained in Annexure-6 would show that the enquiry officer did not find the Petitioner guilty of the charges specially with regard to reduction of length of the spillway. The enquiry officer has recorded his opinion that the reduction in length would not have been possible at the level of the Junior Engineer without due approval/connivance/direction of the Executive Engineer or the so-called superiors.

8. When the disciplinary authority issued a notice of disagreement the Petitioner gave his reply. Despite the finding of the enquiry officer, the fact that the Petitioner was posted in the project between March 1986 to 14th August, 1990 and that he took charge from the then Junior Engineer Ramkant Pathak only on 11.5.1986, Petitioner was dealt with severally. The project was initiated in February, 1986 and came to be completed by 25th February, 1987, when the final measurement was taken. The final bill was prepared on 4.8.1987. The disciplinary authority has further recorded that it is during this period of posting of Petitioner the construction of the dam and spillway was completed. The length of the spillway was reduced to 100 feet from the original drawing of 125 feet. According to the disciplinary authority the Petitioner too had a role in the same. The damage caused to the dam in the night of 29th August, 1987 was due to reduction in the span of the spillway. The pressure of the water mounted on the reduced spillway and the dam gave away. If the original estimate was stuck to or implemented the spread of the water would have been wider and may be the dam would not have been damaged.

9. Submission of learned Counsel is that this point of disagreement of the disciplinary authority is not based on the evidence which came during the enquiry and therefore disagreement is not based on the material emanating from

the enquiry or the report or the evidence tendered during the enquiry. The law being what it is the disciplinary authority has no jurisdiction to draw from materials beyond the enquiry in the disciplinary proceeding conducted against the Petitioner.

10. So far as the proposition of law is concerned, they cannot be any disagreement with the proposition urged by the Petitioner. However, learned Counsel for the Petitioner states that it seems to be correct that the finding of the enquiry officer is based on some if and buts that it was not within the domain of the Junior Engineer to change the length of the spillway. The change must have been brought about on some decision taken by the Executive Engineer or the superior. To that extent the findings given by the enquiry officer is no finding. It is more of his personal opinion on the issue rather than reaching a conclusion on the evidence. Whether the Petitioner had any role in reducing the length of spillway was not examined with due diligence.

11. Even a Junior Engineer has responsibility which he has to shoulder with regard to the project where he has come to be posted at the relevant time. The Court does not want to reopen the issue with regard to the extent of work done by his predecessor and the extent of work done by the present Petitioner, since all those findings are already there recorded in the enquiry as well as the decision rendered by the High Court contained in Annexure-9. But the Petitioner cannot totally shirk the responsibility since at least fifty percent of the work seems to have been done during his tenure and posting at the site.

12. Petitioner has very vehemently submitted that the quality of work done by him was better and since on the day of the incidence i.e. in the night of 29th August, 87 his part was found intact. The conduct of the Petitioner cannot be decided in isolation by deciding the issue that the quality of work done by him was better than the part supervised by his predecessor. There has to be collective responsibility and the Court is of the view that the enquiry officer has very conveniently glossed over the fact as to under what circumstance the length of spillway came to be reduced or as to how the project was completed without their being any serious objection being taken by any of these authorities. Complicity to that extent, if not connivance, therefore cannot be ruled out and the finding given by the enquiry officer cannot be treated to be ultimate word with regard to the charge leveled against the Petitioner.

13. In the above stated circumstance the Court is of the opinion that the Petitioner cannot be totally absolved and cannot be allowed to come home clean and dry on the charge. Some kind of punishment therefore is required to visit him.

14. However, there are some mitigating circumstances which do emerge which include the fact that the Petitioner came to join after at least more than. 50% of the work had already been done by his predecessor of which he had no control. The damage which was caused to the dam primarily related to the portion which

was constructed under the supervision of his predecessor and the work done under the supervision of the Petitioner at least in relation to quality stood the damage which was caused by excessive water having accumulated at the dam on 29th August, 87. In addition to that there is no pleading or evidence on record that the Petitioner had a chequered history in his career prior to the present proceeding.

15. It is the stand of the counsel for the Petitioner that even otherwise the Petitioner was at the fag end of his career and inching towards superannuation which would have intervened on 31.7.2003. According to him the order of dismissal in these circumstances may be too harsh and excessive and the entire service which he had rendered under the Respondents gets undone by the order of dismissal. According to him therefore may be yet another punishment to the extent commensurate with the conduct of the Petitioner ought to be imposed.

16. In the circumstances noted above and the evidence which has come against the Petitioner the Court is inclined to interfere with the order of dismissal by setting aside the same and remanding the matter to the Respondents to consider the possibility of imposing a punishment may be a compulsory retirement against him.

17. The Court therefore quashes Annexure-1 and remits the matter back to the Respondents to reconsider the question of quantum of punishment which ought to be fixed on the Petitioner in the light of what has been recorded in the earlier part of the order. Since it is an old matter now and the writ has remained pending since 1998, the Court expects that an early decision preferably within a period of six months from the date of communication or production of a copy of this order may be enough for taking such a decision.

18. This writ application is allowed to the extent indicated above but without any cost.