
(2005) 02 PAT CK 0079
In the Patna High Court
Case No : C.W.J.C. No. 8418 of 1999

Yogendra Roy

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Citation : (2005) 1 BLJR 595 : (2005) 106 FLR 288 : (2005) 2 PLJR 268

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This application is directed against the order 7.7.1999. (Annexure-13), whereunder the petitioner on the approval of the State Government has been dismissed from service although the order has been issued under the signature of the Deputy Secretary.

3. The petitioner, who at the relevant time in March 1989 was posted as the Junior Engineer in the Main Western Canal Division, Gandak Project, Balmikinagar was placed under suspension in contemplation of a departmental proceeding on account of breach in the said main canal vide order bearing number 244 dated 10.8.1990 (Annexure-1). Later, the departmental proceeding was initiated against him under resolution of the Government bearing number 2827 dated 16.11.1990, Annexure-2 perusal whereof indicates that Sri P.P. Singh, Chief Engineer, Planning and Monitoring, Water Resources Department, Patna was appointed as the enquiry officer and the petitioner was directed to file his written defence/show cause reply before him within two weeks of the receipt of the copy of the resolution. The petitioner having received the resolution along with memo of charges which, inter alia, included non-functioning of the Radial gates on account of its improper maintenance resulting in the breach of the main

canal, submitted his show cause reply dated 21.3.1991 (Annexure-3) perusal whereof indicates that the petitioner denied the allegation and had submitted that the breach in the canal occurred on account of accumulation of silt in the canal bed which were not removed inspite of written request and reminder to the higher authorities for removal of the silt from the canal bed. He further submitted that out of the four Radial gates two were lifted in the fateful night itself and remaining two were also lifted with the help of labourers. According to him, lifting of the Radial gates did not improve the water flow in the canal as there was silt in the canal bed which caused the breach of canal. The enquiry officer considered the aforesaid reply and submitted a report dated 15.1.1992 (Annexure-4) perusal whereof indicates that the enquiry officer did not completely exonerate the petitioner of the charges. He held the petitioner to be negligent as he was not found readily available at the site at the time of the breach of the canal. The State Government considered the report and dismissed the petitioner from service under order dated 3.5.1993 (Annexure-5) The petitioner assailed the dismissal order by filing C.W.J.C. No. 5048 of 1993 which was disposed of under order dated 18.2.1994 directing the petitioner to avail the remedy of appeal against the dismissal order dated 3.5.1993. In compliance of the order of this Court dated 18.2.1994, the petitioner filed an appeal but when the appeal was also not disposed of he again approached this Court and filed C.W.J.C. No. 6726/1995 which was disposed of under order 18.10.1995 directing the appellate authority to dispose of the appeal. In the light of the fresh direction, the appellate authority considered the petitioner's appeal and allowed the same by reinstating him in service vide order dated 16.4.1998 (Annexure-8). Having reinstated the petitioner, authorities issued second show cause notice dated 18.8.1998 (Annexure-9) calling upon the petitioner to show cause as to why he be not dismissed from service in view of the findings recorded by the enquiry officer in the enquiry report dated 15.1.1992. The petitioner filed his reply dated 5.11.1998, Annexure-10 again asserting that he was not responsible for the breach as he maintenance and lifting of the Radial gates. According to him, maintenance of the gates was proper and breach of the canal had occurred only on account of the silt available in the canal bed. The authorities having received the reply dated 5.11.1998 again issued another show cause notice dated 7.12.1998 (Annexure-11) and called upon the petitioner to further submit his reply regarding lack of interest shown by him in proper maintenance of the radial gates. The petitioner in compliance of the directions contained in notice dated 7.12.1998 again submitted his reply dated 10.12.1998 (Annexure-12) and once again reiterated the same stand which he had earlier taken with reference to his own letters and reminders to the higher authorities through which he had requested them to ensure complete stoppage of water flow in the canal from Nepal side so that the silt of the canal be cleaned. The second show cause reply dated 18.8.1998, Annexure-9 and 10.12.1998 (Annexure-12) were again considered by the State Government and thereafter the impugned order was issued by the Deputy Secretary dated 7.7.1999, Annexure-13, whereunder the petitioner has again been dismissed from service.

4. Learned counsel for the petitioner has assailed the aforesaid dismissal order on two grounds, namely, the Engineer-in-Chief being the appointing/ disciplinary authority of the petitioner was required to have considered the show cause reply filed by the petitioner as he being a technical expert was in a better position to appreciate as to whether petitioner had taken the necessary steps for maintenance of the Radial gates and the breach was on account of accumulation of silt in the canal bed. He further submitted that the impugned order having been passed with the approval of the State Government petitioner's right to appeal against his dismissal under the Rules is permanently impaired. He further questioned the correctness and validity of the impugned order on the ground that the punishment of dismissal for the charge of negligence to maintain the Radial gates properly not only appears to be harsh but shocks the conscience of a man with ordinary prudence as for negligency in maintaining the Radial gates, the Junior Engineer should not be dismissed rather some lighter punishment under the Rules may be awarded.

5. On the other hand, learned counsel for the State has supported the impugned dismissal order and submitted that the impugned order having been passed by the authority superior to the Engineer-in-Chief, as such should not be interfered with by this Court. He further contends that in any view of the matter, canal having been breached on account of the negligence in the form of improper maintenance of the Radial gates or for the failure to remove the silt from the canal bed resulted in severe loss to the Government exchequer as also to the farmers whose crops were destroyed. Thus, according to him, for all these reasons, the impugned order should not be interfered with.

6. Having heard learned counsel for the parties, I am satisfied that from the perusal of the impugned order it does not appear that the defence set up by the petitioner that he requested in writing as also issued reminders to his superior to ensure proper maintenance of the Radial gates as also for removal of the silt from the canal bed was never considered by the Disciplinary authority of the petitioner, namely, the Engineer-in-Chief who is the technical head of the department as such the impugned order dated 7.7.1999 is fit to be set aside with direction to the Engineer-in-Chief to reconsider the matter in the light of the defence set up by the petitioner that he had made written request as also issued reminders to ensure proper maintenance of the Radial gates as also removal of silt from the canal bed. The impugned order dated 7.7.1999, Annexure-13 is accordingly set aside and the matter is remitted back to the Engineer-in-Chief, respondent No. 4 who should consider the entire matter afresh without being prejudiced by the earlier impugned orders dismissing the petitioner issued after the approval of the State Government. While reconsidering the matter the Engineer-in-Chief should bear in mind that for negligence in maintaining the Radial gates leading to breach in the canal one should not be given the extreme penalty of dismissal from service.

7. Payment of arrears of salary of the petitioner shall be the subject to the final

orders to be made in the proceedings by the Engineer-in-Chief in terms of the present order. So far current salary is concerned, the petitioner shall be paid his current salary with effect from the date of this order.

8. The reconsideration exercise by the Engineer-in,-Chief in compliance of the orders of this Court in the present application should be completed within a period of three months from the date of receipt/production of a copy of this order.

9. The writ application thus stands allowed in the aforesaid terms. No cost.