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Court : Patna

Decided On : Sep-05-2002

Judge : Sachchidanand Jha, J.

Appeal No. : Civil Writ Jurisdiction Case Nos. 595, 693 and 4939 of 2000

Appellant : Dilip Kumar Singh and ors.

Respondent : The State of Bihar and ors.

Disposition : Writ Petitions Allowed

Judgement :

Sachchidanand Jha, J.

1. The dispute involved in these writ petitions is the same and as such they have been heard together and are disposed of by this common order. The petitioners are aggrieved by the orders directing recovery of a total sum of Rs. 6,69,292,20 from their salary and, in case of retirement, from their pension and gratuity. The petitioner of CWJC No. 4939/2000 at the relevant time was Executive Engineer (Called Senior Project Engineer), Ranchi Works Division of the Bihar State Bridge Construction Corporation, while petitioners of CWJC Nos. 595/2000, 693/2000 were Assistant Engineer (Called Project Engineer) and Junior Engineer respectively, under him. The amount is to be recovered from their salary in the ratio of 5:3:2. Thus, while Rs. 3,34,646.10 is to be recovered from the petitioner of

CWJC No. 4939/, Rs. 2,00,787.66 is to be recovered from the petitioner of CWJC No. 595/2000 and Rs. 1,33,558.44 is to be recovered from the petitioner of CWJC No. 693/2000. The representative facts of the case may be noticed from CWJC No. 4939/2000.

2. Petitioner Devendra Prasad Sinha was posted as Senior Project Engineer at the Ranchi Works Division of Bihar State Bridge Construction Corporation (in short 'the Corporation') between 25.7.1987 and 12.1.1993. On 28.8.1990 the Managing Director of the Corporation directed the Senior Project Engineers of various Works Divisions to submit report regarding bridge-wise requirement of cement in their respective division for the period September 1990 to March 1991. The petitioner by letter dated 29.8.1990 submitted report giving details of the requirement at 850 Metric Tones. On 18.9.1990 the Corporation invited quotations for supply of cement. It was inter alia mentioned in the tender notice that the supply should commence within seven days of the issuance of the supply order and completed phase-wise up to March 1991. Further, rate should be quoted as applicable to the place where supply was to be made. Along with the tender notice list of the places of supply along with the quantity of supply was enclosed. So far as the Ranchi Works Division is concerned the quantity of cement was mentioned as 800 Metric Tones and the place of supply was mentioned as Ranchi Rail Head. It is relevant to mention here that, amongst other divisions, 1150 Metric Tones of cement was to be supplied at Gaya Rail Head for the Gaya Works Division. Curiously, however, in the Supply Order the requirement of both Ranchi Works Division and Gaya Works Division was clubbed and Ranchi Rail Head was shown as the place of supply of 1950 Metric Tones (800 + 1150) and the Senior Project Engineer, Ranchi Works Division was made consignee of the entire quantity. Communication to this effect was sent by the Managing Director to the respective Senior Project Engineers on 26.11.1990. The case of the petitioner is that on 22.12.1990 he requested the Senior Project Engineer, Gaya Works Division to make arrangement to lift 1150 Metric Tones which was allotted for the Gaya Division informing him that there was lack of space in the godowns at Ranchi. Earlier on 19.12.1990 the petitioner also informed the Senior Project Engineer, Works Division No. 1, Patna that Gumani Bridge for which 200 Metric Tones of cement was required and allotted as per the requirement shown by letter dated 29.8.1990 and allotment

stood transferred to his division i.e. Works Division No. 1, Patna and therefore, arrangement should be made to lift 200 Metric Tones of cement from Ranchi Rail Head. Pursuant to his letter dated 22.12.1990 (Supra), the Senior Project Engineer, Gaya Works Division informed the petitioner by his letter dated 4.1.1991 that in the Gaya Division space was available for storage of only 10600 bags of cement. Accordingly he made a request that the balance quantity of cement may be kept in the godowns at the Ranchi Works Division, and the same would be lifted by middle of February. On 22.1.1991 the Senior Project Engineer, Gaya Works Division, deputed one Ram Bachan Upadhyay, a Junior Engineer, to take delivery of 1150 Metric Tones. He however took delivery of only 6.60 Metric Tones. On 6.5.1991 the petitioner informed his Gaya counterpart that in the godowns at Pandara, Ranchi, cement meant for Gaya Works Division alone was kept pointing out that supply had been made four months ago and as a result of the non-lifting of the balance quantity of cement, the Division was incurring expenditure as rent. The petitioner accordingly made a request to take delivery of balance quantity from the Pandara Godown. In the meantime the petitioner had also kept Deputy Chief Engineer, South Bihar Circle of the Corporation, informed about these developments vide letters dated 5.1.1991 and 23.1.1991. After the above said requests of the Senior Project Engineer, Gaya Works Division, failed to elicit any response, the petitioner took steps at his level to get the cement utilised by different Works Division of the Building Construction Department vide letters dated 26.11.1991 and 4.1.1992. Finally on 26.11.1991 the petitioner submitted a detailed report to the Managing Director of the Corporation stating the circumstances in which the cement meant for the Gaya Works Division was delivered at Ranchi Rail Head making him consignee of the entire stock of 1950 Metric Tones, only part of the cement required by the Gaya Works Division had been taken delivery of. He pointed out that storage of excess cement had been brought to his (the Managing Director) notice in the meeting at Patna on 3.4.1991. A request had also been made for allotment for construction bridges under the Ranchi Works Division which was not allowed and in these circumstances the stock of cement could not be consumed. Many more facts were stated in the report which it is not necessary to notice for disposal of this case.

3. On 17.6.1996 the Joint Secretary, Road Construction Department, directed the Managing Director to assess the amount of loss suffered on account of non-consumption of the cement and the recoverable amount from the concerned officers. On 11.9.1996 pursuant to the letter of the Joint Secretary, the Managing Director asked the petitioner to show cause as to why the amount of loss be not recovered. On 26.9.1996 the petitioner submitted his show cause. Though the Managing Director of the Corporation had earlier submitted report vide letter dated 9.2.1996 that none was liable for the loss, on 17.12.1997 he recommended recovery of 50% of the loss from the petitioner. In the light of the said recommendation of the Managing Director, the impugned notification was issued for recovery of the amount of loss as indicated at the outset.

4. The letters/report referred to above have been enclosed with the writ petition and it has been submitted that in the circumstances, if the cement became unfit for utilization the petitioner cannot be held responsible. The Deputy Chief Engineer, South Bihar Circle, vide his letter No. 823 dated 24.9.1992 had pointed out that the lapse, if any, was on the part of the Senior Project Engineer of Gaya Works Division and the petitioner could not be held responsible. He submitted similar report vide letter No. 595 dated 26.10.1995. The matter was raised on the floor of the Bihar Legislative Assembly and as per the stand of the Government the petitioner was not responsible for the loss. The case of the petitioner is that without considering the aforementioned reports, in a mechanical manner he has been held responsible, along with others, and made liable for the loss.

5. I find merit in the case of the petitioner, it is clear, on the facts stated above, that even though the petitioner had submitted requirement for 850 Metric Tones as against which the allotment of only 800 Metric Tones was sanctioned, he was made consignee of the quantity of cement meant for the Gaya Works Division too for which there is no explanation. It is to be kept in mind that as per the tender notice, the cement was to be supplied, for the Gaya Works Division, at the Gaya Rail Head. If in terms of the tender notice, quotations were invited with reference to the place of supply, as indicated above, it is wholly un-under stand able as to how place of supply was changed from Gaya Rail Head to Ranchi Rail Head. Even if it was so, 1150 Metric Tones of cement having been allotted for the Gaya Works

Division, it was the whole and sole responsibility of the Senior Project Engineer, Gaya Works Division, to take its delivery from the godowns at Ranchi. The Senior Project Engineer, Gaya Works Division, responded to the petitioner's request on 4.1.1991 only to inform the petitioner that cement may be kept at the godowns within Ranchi Division until middle of February. It was only on 23.1.1991 that he authorised Ram Bachan Upadhayay, Junior Engineer, to take delivery of the stock. Ram Bachan Upadhayay however took delivery of only 6.60 Metric Tones of cement.

6. It was stated by the Counsel for the State that Ram Bachan Upadhayay submitted report that remaining bags were damaged or short in weight. Having regard to the nature of the article i.e. cement, it is difficult to visualise that in the cement godowns where thousands and thousands of bags of cement are kept, 6.60 Metric Tones of quality cement in bags of proper weight could be selected from the stock as if they were fruits or vegetables. It may be easier to select a few bags of cement and discard few others but to pay that hundreds out of thousands of bags were found to be in good condition and of proper weight while the rest were not such, is a different proposition. Even, if it was so, the petitioner or his subordinates who are petitioners in other cases, cannot be held to be responsible.

7. I am conscious of the fact that in writ jurisdiction this Court is not supposed to interfere with the findings of fact recorded in a disciplinary proceeding as if sitting in appeal. Nevertheless where it appears that the conclusion of the authority is perverse - which no reasonable person could reach - the Court would be failing in its duty if it does not interfere on a technical ground.

8. In the facts and circumstances of the I am inclined to agree with the submission of the Counsel for the petitioner that attempt should have been made to fix the responsibility for making the Senior Project Engineer of Ranchi Works Division as consignee, with respect to the quantity of cement meant for the Gaya Works Division. Similarly, attempt should have been made to examine the role of the then Senior Project Engineer, Gaya Works Division as to why steps were not promptly taken to lift the cement from the Ranchi Godown by January/February 1991 resulting in deterioration of cement, and similarly, enquiry should have been made

as to why 200 Metric Tones which was initially required for the Gumani Project within the Ranchi Works Division but later transferred to Patna Works Division, was not taken delivery of by the concerned Senior Project Engineer. Without making any serious efforts to fix the responsibility and identify the persons really responsible for the loss, in a mechanical manner the petitioners have been arbitrarily held responsible. The impugned decision to recover the amount of loss from the salary/retrial dues of the petitioners in the facts and circumstances therefore cannot be justified.

9. In the result, the impugned notifications/orders as contained in Annexure-1 in CWJC No. 595/2000, Annexure-18 CWJC No. 693/2000 and Annexure-25 in CWJC No. 4939/2000 are quashed with a liberty to the respondents to pass fresh order in the matter in accordance with law.

The writ petitions are thus allowed.

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