

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14344 of 2006

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Surendra Pandey, son of late Bal Govind Pandey, resident of village-Sheo Nagar, P.O.-Madhopur, P.S.-Tekari, District-Gaya. At present posted as Head Clerk, Anchal Gurua in the district of Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub-Divisional Officer, Tekari, District-Gaya.
5. The Block Development Officer, Tekari, District-Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar
 Mr. Shiw Kumar Prabhakar
For the Respondent/s : Mr. Anjani Kumar, AAG-6

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 27-01-2015

Heard the parties.

The petitioner is aggrieved by the order dated 28.12.2005 (Annexure-7) passed by the respondent District Magistrate, Gaya, whereby, after disagreeing with the enquiry report submitted by the enquiring officer, the respondent District Magistrate has awarded the punishment of stoppage of four increments of pay with cumulative effect to the petitioner and it has further been held that the petitioner shall not be entitled to receive anything else except the subsistence allowance paid to him during the period of suspension. He is also aggrieved by the order dated 14.09.2006 (Annexure-8) passed in Case No.01/2006 by the respondent Commissioner, Magadh Division, Gaya, whereby the appeal preferred by the petitioner against the order of punishment passed by the disciplinary authority has been dismissed and the order of punishment has been affirmed.

Learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned original order as also the impugned appellate order, as contained in



Annexures-7 and 8 respectively, has raised various points. According to him, the impugned orders, as contained in Annexures-7 and 8, are not sustainable. It is contended that in the departmental proceeding initiated against the petitioner certain charges were framed against him, he filed his written statement of defence denying those charges, whereafter the enquiry report was submitted by the enquiry officer, but the copy of the enquiry report was never served upon him. Yet, the respondent District Magistrate has disagreed with the enquiry report, held the petitioner guilty for the charges and awarded the impugned punishment vide order as contained in Annexure-7. It is next contended that the appellate authority has not gone into the merits of the claims raised on behalf of the petitioner and has mechanically dismissed the appeal filed on his behalf.

Learned AAG-6 appearing on behalf of the respondents has strongly opposed the prayer made on behalf of the petitioner. He submits that in view of the gravity of the charges of misconduct against the petitioner, he has been let off with lesser punishment. According to him, the petitioner ought to have been awarded severe punishment. Therefore, it is pleaded that the orders impugned, in the factual matrix of the case, do not require any interference by this Court. However, in response to a query made by this Court, he has not been able to show from the counter affidavit or from the supplementary counter affidavit filed on behalf of the respondent no.2 that the copy of the enquiry report was ever served upon the petitioner.

After having heard the learned counsels for the parties and taking into consideration the materials available on record, this Court is of the opinion that the matter requires re-consideration and fresh decisions. By catena of decisions, law has been well settled that in a departmental proceeding against a government servant a copy of the enquiry report must be served upon him and only thereafter the

matter can proceed further and a final decision can be taken by the disciplinary authority.

So far the present case is concerned, admittedly the copy of the enquiry report was not served upon the petitioner and, therefore, the impugned order of punishment as also the impugned appellate order cannot be sustained.

For the reasons recorded above, the impugned original order dated 28.12.2005 (Annexure-7) passed by the respondent District Magistrate, Gaya as also the impugned appellate order dated 14.09.2006 (Annexure-8) passed by the respondent Divisional Commissioner, Gaya are hereby set aside and quashed and the matter is remitted back to the respondent District Magistrate, Gaya with a direction to proceed further in the aforesaid departmental proceeding against the petitioner from the stage of serving of enquiry report to him. The petitioner shall be obliged to cooperate in early conclusion of the departmental proceeding. The departmental proceeding must be concluded by the respondent District Magistrate, Gaya within a maximum period of six months from the date of receipt/production of a copy of this order.

However, for the purpose of conclusion of the departmental proceeding afresh, as directed above, since the matter has become old one, it is directed that the petitioner shall not be unnecessary harassed and shall not be put under suspension once again on the ground of pendency of the departmental proceeding.

The writ petition stands allowed to the extent indicated above, but with the observations and directions made above. However, the parties are left to bear their own cost.

Arvind/-

(Birendra Prasad Verma, J)

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