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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13629 of 2013

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Upendra Jha Son Of Late Nandu Jha Resident Of Flat No.201, Dream Mansion Apartment, Vijay Nagar, Police Station- Rupaspur, Bailey Road, District- Patna- 800014

.... Petitioner

Versus

1. The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Department Of Personnel And Administrative Reforms, Now General Administration Department, Government Of Bihar, Patna
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The Commissioner, Magadh Division, Gaya

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Dinesh Maharaj, Advocate
For the Respondent/s : Mr. Rajesh Kumar

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

2 07-12-2015 Learned State counsel submits that at the time of transfer of brief, he did not find a copy of the original counter affidavit and as such he is producing before the Court a copy of the same, which is taken on record.

The petitioner submits that during the service period, two separate disciplinary proceedings were initiated which resulted in imposition of punishment. The petitioner has challenged the disciplinary proceeding as well as separate punishment awarded in those two proceedings. The petitioner being conscious that it would not be appropriate to challenge both the disciplinary

proceedings in one composite writ application has very fairly confined his prayer for quashing of punishment dated 25.4.2013, as contained in Annexure-12 which relates to his alleged act of omission and commission while he was posted as Deputy Collector, Land Reforms at Muzaffarpur.

As the petitioner has confined his prayer to quashing of the order dated 25.4.2013, as contained in Anneure-12, he would be at liberty, if so advised, to challenge the order as contained in Annexure-26 by way of separate writ application.

Before, I consider the grounds of challenge, it would be appropriate to notice the facts of the case in brief. The petitioner was initially appointed 10.5.1980 as Deputy Collector, who after attaining the age of superannuation, retired from the post of Deputy Collector, Land Reforms on 31.7.2011. The petitioner was proceeded departmentally for the five charges by resolution dated 1.6.2009, as contained in Annexure-1. The inquiry officer did not find the petitioner guilty of the charges. Thereafter, second enquiry was ordered and in the said enquiry also the Inquiry Officer did not find the charges proved against the petitioner. The first enquiry report, dated 12.4.2010 and the second enquiry report, dated 20.2.2011 are contained in Annexure-2 and 3 respectively to the writ petition.

However, no final order was passed in the matter and the petitioner retired in the meantime on 31.7.2011. It appears that after superannuation of the petitioner, the Government vide its order dated 3.4.2012 (Annexure-8) converted the proceeding which had not reached its final stage into one under Rule 43(b) of the Bihar Pension Rules. After passing of the order dated 3.4.2012, the government reviewed the previous two enquiry reports. On reviewing the two reports, the government came to the conclusion that due to negligence of the petitioner in performing his duty, the government has suffered loss of revenue and the as such the Government decided to deduct 5% of pension amount of the petitioner by way of punishment and sought response of the petitioner to the said punishment. A copy of the composite order of punishment as well as show cause dated 25.4.2013 is contained in Annexure-12.

The petitioner being aggrieved by the said order has filed the instant writ application. The petitioner submits that the disciplinary authority is required to give a notice setting out his tentative conclusion to the charges and only after considering his response, the disciplinary authority can arrive at a final finding of guilt. Thereafter, the disciplinary authority would be again required to seek petitioner's response to the proposed punishment.

He further submits that in the instant case the respondent without providing an opportunity to submit his explanation by a composite order has inflicted punishment.

Learned counsel for the State submits that the disciplinary authority can very much differ with the findings of the Inquiry Officer. He submits that the Government on coming to a finding that there are materials against the petitioner, has decided to deduct 5% of the pension amount.

I have heard learned counsel for the parties.

It is well settled that if the disciplinary authority differs with the view taken by the Inquiry Officer, it is first to give an opportunity to the delinquent to file his response on the point of difference and only after considering the explanation of the delinquent, could have arrived at a tentative punishment, for which again a show cause was required.

In the instant case, the respondents has not given any notice before recording its final conclusion differing with the findings of fact of the Inquiry Officer and straightaway taken a decision to punish the petitioner. As such, the show cause issued to the petitioner to file his response was a mere formality.

In this view of the matter, the impugned order dated 25.4.2013, as contained in Annexure-12, passed by the

disciplinary authority is not sustainable in law and is accordingly set aside.

In the result, this writ application is allowed to the extent indicated above.

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(Samarendra Pratap Singh, J)

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