

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15457 of 2006

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Binod Paswan son of Sri Muni Paswan, resident of village Rani Bigha, P.O. Utrain, P.S. Tekari District Gaya. At present posted as an Assistant in the Block Belaganj, in the district of Gaya.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Magadh Pramandal, Gaya.
3. The District Magistrate, Gaya District Gaya.
4. The Block Development Officer, Tekari, District Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar

For the Respondent/s : AC to Addl. Advocate General-6

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-03-2015

Heard Sri Dinu Kumar, learned counsel for the petitioner and learned A.C. to Addl. Advocate General – 6.

The sole petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 18th January, 2006 contained in Memo No. 115. By the said order, the respondent no. 3/District Magistrate, Gaya has inflicted punishment against the petitioner as follows:-

- (i) **Four increments have been withheld with cumulative effect, and**
- (ii) **Petitioner shall not be entitled to get salary, save & except, the subsistence allowance during the period of his suspension.**

Short fact of the case is that the petitioner on certain charges was put under-suspension by order dated 11th December,



2003 (**Annexure '1'** to the writ petition). After about three months, memo of charge was issued and one Sri Mahavir Sharma, the Deputy Collector was appointed as Conducting Officer. After receipt of memo of charge, the petitioner submitted a detailed reply denying categorically all the five charges. After conducting enquiry, the Conducting Officer submitted its report exonerating the petitioner from all the charges, however; the disciplinary authority by order dated 18-01-2006 (**Annexure '6'** to the writ petition), differing with the recommendation of the enquiry officer, inflicted the punishment, as indicated here-in-above. Aggrieved with the order of the disciplinary authority, the petitioner preferred an appeal before the Divisional Commissioner, Gaya, vide Appeal No. 7 of 2006. The Divisional Commissioner took up other three appeals also alongwith the appeal preferred by the petitioner, in which similar orders were passed, however; the Divisional Commissioner, agreeing with the order of the District Magistrate, rejected the appeal preferred by the petitioner and other three appellants (**Annexure '7'** to the writ petition). The petitioner, aggrieved with both the orders i.e. order of the disciplinary authority and the order passed by the appellate authority, has approached this Court and assailed both the orders.

Sri Dinu Kumar, learned counsel for the petitioner, at the



very outset, has placed an order passed by this Court on 23-02-2015 in **C.W.J.C. No. 15160 of 2006** (*Rameshwar Prasad Vs. The State of Bihar & Ors.*). He submits that in relation to the same transaction, departmental proceeding was also initiated against Rameshwar Prasad and others including the petitioner. In all the departmental proceeding, the enquiry officer had exonerated the delinquent, however; in the similar manner, the disciplinary authority imposed the punishment order, which was assailed by Rameshwar Prasad before the appellate authority, vide Appeal No. 3 of 2006. The said appeal was also dismissed alongwith the appeal preferred by the petitioner and others two appeals by the Divisional Commissioner. He submits that Rameshwar Prasad approached this Court by filing C.W.J.C. No. 15160 of 2006 and considering the fact that after receipt of the enquiry report, before inflicting punishment, the enquiry report was not communicated to the petitioner nor second show cause notice was issued, this Court, by its order dated 23-02-2015, has set aside both the orders i.e. order passed by the District Magistrate, Gaya and the Divisional Commissioner, Gaya. Learned counsel for the petitioner has also produced an order passed by a bench of this Court dated 27-01-2015 in **C.W.J.C. No. 14344 of 2006** (*Surendra Pandey Vs. The State of Bihar & Ors.*). In the said case also, this Court quashed both

the orders, however; in C.W.J.C. No. 14344 of 2006, a bench of this Court, after setting aside order of disciplinary authority as well as appellate authority, remitted back the matter to the disciplinary authority to initiate proceeding from the stage of providing enquiry report to the delinquent.

In the present case, Sri Dinu Kumar, learned counsel for the petitioner has emphasized that ofcourse, the petitioner was proceeded for five charges, which were thoroughly explained by the petitioner, the disciplinary authority, ignoring the settled principle of law for communicating the enquiry report before inflicting punishment while passing the punishment order, has introduced a new charged i.e. charge no. 1, which has been elaborated in **Annexure '6'** to the writ petition. It has been argued that said charge was never incorporated in the memo of charge, which was served on the petitioner, vide **Annexure '2'** to the writ petition. He further argues that departmental proceeding has been vitiated due to the reason that while appointing conducting officer, the disciplinary authority had not bothered to appoint either presenting officer or an officer to assist the delinquent. Moreover, it has been argued that in this case, without supplying enquiry report, which was in favour of the petitioner, the punishment order has been passed showing some

reason regarding deferring with the enquiry report. On aforesaid ground, particularly; on the ground that in identical case, this Court has quashed the order of punishment and order of appellate authority in C.W.J.C. No. 15160 of 2006, he submits that the petitioner deserves the same relief.

Learned A.C. to Addl. Advocate General – 6 has vehemently opposed the prayer of the petitioner. By way of referring to facts disclosed in the counter affidavit, it has been argued that there were serious charges against the petitioner & other officials and as such, a departmental proceeding was initiated. Ofcourse, according to learned counsel for the State, the conducting officer had exonerated the petitioner, but before inflicting punishment order, the District Magistrate had assigned detailed reason differing with the enquiry report. According to learned counsel for the State, the writ petition is fit to be rejected.

Besides hearing learned counsel for the parties, I have also perused the materials available on record, particularly; the order of punishment as well as order of the appellate authority. From the order of the disciplinary authority, it is evident that nothing was indicated as to whether after receipt of the enquiry report, which exonerated the petitioner, was provided to the petitioner. Once in a

departmental proceeding, a report is submitted by the conducting officer exonerating the delinquent and the disciplinary authority proposes to differ with the enquiry report, it is necessary for the disciplinary authority to provide an opportunity to the delinquent to justify the enquiry report. Since the petitioner was not provided with enquiry report nor second show cause notice was issued to the petitioner, this categorically establishes that the disciplinary authority, in contravention of principle of natural justice, had proceeded to inflict the punishment order. Similarly, the appellate authority has not applied its mind while considering the appeal. Moreover, in one of the case, on similar footing of one Rameshwar Prasad, since this Court has already interfered and quashed the order of punishment as well as appellate authority, there is no reason to differ with the same stand.

Accordingly, both the orders i.e. order dated 18-01-2006 passed by the District Magistrate, Gaya (**Annexure '6'**) and order dated 14-09-2006 passed by the Divisional Commissioner, Gaya in Appeal No. 7 of 2006 (*Binod Paswan Vs. State of Bihar*) i.e. **Annexure '7'** are, hereby, set aside.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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