

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15160 of 2006

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Rameshwar Prasad, son of Late Tetar Prasad, resident of village- Rikabganj, P.S. Tekari in the district of Gaya, at present posted as Head Clerk in the Bela Block in the district of Gaya

.... Petitioner

Versus

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

Appearance :

For the Petitioner : Mr. DINU KUMAR

Mr. Rohit Mishra

Mr. Rajesh Kumar

For the Respondents : Mr. AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-02-2015

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Heard Sri Dinu Kumar, learned counsel for the petitioner and learned AC to GA-9.

The sole petitioner, invoking writ jurisdiction of this Court under Article-226 of the Constitution of India, has prayed for quashing of an order, contained in Memo No.1701 dated 21st December, 2005 issued under the signature of the District Magistrate, Gaya (Annexure-7 to the writ petition), whereby in a departmental proceeding, the petitioner was inflicted punishment of withholding of four increments with cumulative effect and further it was held that save and except subsistence allowance during suspension period, the petitioner shall not be entitled to



get anything. The petitioner has further prayed for quashing of order dated 14th September, 2006 passed in Appeal Case no.3 of 2006 issued under the signature of the Divisional Commissioner, Magadh Division, Gaya (Annexure-8 to the writ petition), whereby the petitioner's appeal , which was heard analogously with other three appeals, was dismissed.

Learned counsel for the petitioner submits that for certain charges, the petitioner was proceeded departmentally. He submits that in respect of charges relating to same transactions, besides the petitioner other three officials of Tekari Block were also proceeded separately. In the departmental proceeding, the conducting officer after conducting enquiry submitted a report exonerating the petitioner, however the disciplinary authority vide Annexure-4 to the writ petition i.e. Memo No.189 dated 15.03.2005, issued second show cause notice, which was properly replied by the petitioner and finally, the impugned order of punishment was issued. It has been argued that after submission of enquiry report, the enquiry report was never supplied to the petitioner, while issuing second show cause notice.

Sri Dinu Kumar, learned counsel for the petitioner has further argued that of course, second show cause notice was



issued, however after receipt of enquiry report exonerating the petitioner, while issuing second show cause notice, the disciplinary authority has not assigned any reason for differing with the enquiry report. Accordingly, it has been argued that the order impugned is liable to be set aside on both counts i.e. non-supply of enquiry report as well as non-assigning any reason for differing with enquiry report by the disciplinary authority. It has further been argued that in respect of one of the employees, who was the Head Clerk in the same Block, namely, Sri Surendra Pandey, this Court had noticed the similar irregularity and interfered with the order of the disciplinary authority as well as the appellate authority.

Earlier, by order dated 02.02.2015, record of C.W.J.C.No.14344 of 2006 was called for, which has been placed along with present record.

Learned State Counsel has opposed the prayer of the petitioner and it has been highlighted that the petitioner was proceeded for serious charges, which has been enumerated in paragraph-6 of the counter affidavit.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that in the counter affidavit, particularly in paragraph-15, the

Respondent/State has accepted non-service of enquiry report, but a plea has been taken that it is a mere procedural defect, which may not vitiate the proceeding.

I have perused the order dated 27.01.2015 passed in C.W.J.C.No.14344 of 2006, which have been passed almost in similar circumstances. Moreover, since the Respondent/State has already accepted regarding non-supply of enquiry report, the order of the disciplinary authority is liable to be set aside on this count alone. Beside this, the second show cause notice, which was issued by the disciplinary authority, does not make it clear as to under what circumstances the disciplinary authority has differed with the enquiry report, whereby the conducting officer had exonerated the petitioner. Once in a departmental proceeding, an enquiry report exonerating the delinquent is submitted, the disciplinary authority, while differing with the enquiry report, is required to assign succinctly reason for differing with such enquiry report. From Annexure-4 i.e. second show cause notice, it is evident that while differing with the enquiry report, no reason has been assigned. Moreover, since in an identical case, a Bench this Court has set aside the order of the disciplinary authority as well as the appellate authority, there is no reason to deny the same prayer of the petitioner.

Accordingly, the orders contained in Annexures 7 and 8 passed by the District Magistrate, Gaya and the Divisional Commissioner, Gaya are hereby set aside. The writ petition stands allowed with all consequential benefits.

(Rakesh Kumar, J)

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