

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14612 of 2006

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Bishwanath Singh son of Late Bramdeo Singh, resident of village Gharbana,
Police Station Mejorganj, District East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. Commissioner, Tirhut Commissioner, Muzaffarpur
3. Collector, Sitamarhi
4. Deputy Collector, District Sitamarhi
5. Block Development Officer, Block Belsand, District Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the Respondent/s : Mr. Rakesh Kr.Singh, AC to GP 3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 30-01-2015

Heard the parties.

2. The petitioner is aggrieved by the order dated 21.09.2005 (Annexure-5) passed by the respondent Collector, Sitamarhi, whereby on the basis of findings recorded in the departmental proceeding, he has been visited with punishment of stoppage of two increments of pay with cumulative effect. It has been further directed by the aforesaid order that the petitioner shall not be entitled to receive any other amount for the period of suspension except the subsistence allowance already paid to him. The petitioner is also aggrieved by the appellate order dated 29.08.2006 (Annexure-6) passed by the respondent Commissioner, Tirhut Division, Muzaffarpur whereby the appeal preferred by the petitioner has been dismissed and order of punishment has been affirmed.

3. Learned counsel appearing on behalf of the petitioner has raised a very short question. According to him, though by the impugned original order dated 21.09.2005 (Annexure-5) the petitioner

has been awarded major punishment, yet before passing the final order, second show cause notice was not issued to him. Therefore, according to him, impugned orders cannot be sustained in law.

4. Learned AC to GP 3, appearing on behalf of the respondents, has opposed the prayer made on behalf of the petitioner by referring to the averments made in the counter affidavit filed on behalf of the respondent nos. 3 and 4, but has fairly conceded that the punishment awarded to the petitioner is in the category of major penalty and not minor penalty as contemplated under Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (in short "Rules, 2005"). According to him, second show cause notice was not issued to the petitioner on the assumption that the penalty awarded to the petitioner was minor in nature.

5. After having heard the parties and on consideration of the materials on the record, this Court is of the opinion that the matter requires reconsideration and fresh decision in accordance with law, as the impugned orders passed by the authorities in the present form cannot be sustained on the ground of infraction of statutory provisions. In view of categorization of the penalties under Rule 14 of the Rules, 2005, withholding of increments of pay with cumulative effect is in the category of major penalty. Therefore, before awarding such penalty, the petitioner was entitled to receive second show cause notice in terms of Rule 18 of the Rules, 2005, but admittedly, that has not been done in the present case.

6. For the reasons recorded above, the impugned order dated 21.09.2005 (Annexure-5) passed by the District Collector, Sitamarhi as also the impugned appellate order dated 29.08.2006 (Annexure-6) passed by the Commissioner, Tirhut Division, Muzaffarpur are hereby set aside and quashed and the matter is

remitted back to the respondent District Collector, Sitamarhi with a direction to proceed afresh in the aforesaid departmental proceeding against the petitioner from the stage of issuance of second show cause notice and thereafter the departmental proceeding against the petitioner shall be taken to its logical conclusion in accordance with law.

7. The writ petition stands allowed to the extent indicated above, but without costs.

(Birendra Prasad Verma, J)

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