IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18183 of 2008

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Navin Kumar, Son of Sri Bhagwan Singh, Resident of Village- Palidih, P.S. Bhagwanpur, District Begusarai

.... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner, Commercial Taxes- cum-Principal Secretary (Govt. of Bihar), Patna
2. Under Secretary to the Government, Finance (Commercial Taxes), Department of Bihar, Patna
3. District Magistrate, Bhojpur at Ara
4. Deputy Development Commissioner, Bhojpur at Ara

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bidhanesh Misra
Mrs Tanuja Mishra

For the Respondent/s : Mr. Bishwa Bibhuti Kumar Singh, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 14-05-2015

A set of 15 charges was drawn against the petitioner. The details of which is available as Annexure- 12. Out of 15 charges, the enquiry officer found the petitioner partially guilty of charge no.5, 14 and 15. These three findings in relation to those charges point towards one fact that the petitioner is intemperate, if not indiscreet in his conduct while dealing with superior authorities or officers while he was posted as a Treasury Officer at Ara. Other serious charges against him did not stick to him and the explanation offered by the petitioner on the rest of the charges were accepted and held in favour. After the second show cause and due consideration of the explanation offered initially eight increments with cumulative effect was withheld with bar to promotion till the year 2016. The orders of punishment are contained in Annexure- 1 and Annexure 17, which are dated 11.8.2008 and 5.9.2008 respectively. Petitioner wanted quashing of the said orders. Some more developments, however, have taken place. Subsequently the punishment of withholding of eight increments was reduced to three but the bar to promotion till 2016 remained.

The Court has gone through the charges and the findings extensively. From a reading of the materials, it is evident that petitioner has not been dishonest in performance of his duties as such but he is dealing with his colleagues or superiors in communication-oral or written does not behove a government servant. Those findings stick to the petitioner. Probably, the lack of dishonest intent on the part of the petitioner ultimately carried the day for him and punishment of withholding of increments is finally reduced to three instead of eight.

In totality of the circumstances, the Court does not find any omission or aberration in the procedure followed as well as the findings which came to be arrived at. If there was an occasion to interfere with Annexure 1 that seems to have been rectified by scaling down the withholding of increments to three now as would be evident from Annexure- A to the counter affidavit of the respondents.

This order is dated 23.1.2012.

The Court would not like to interfere with the punishment of withholding of increments because there are some findings, which does not come within the approved norms of conduct of a government servant. Therefore, withholding of three increments will take effect from 11.8.2008, even though the said order was modified on 23.1.2012 and would relate back to initial order of punishment dated 11.8.2008.

The other punishment as would be evident from Annexure- 1 is that the authorities have decided to withhold or debar consideration of promotion of the petitioner till 2016. The rational or the logic for debarring the petitioner from promotion for eight years is a little bewildering.

If there is an order of punishment like withholding of increments then the rules governing the period, which will come in the way, before claim for promotion could be considered will apply. If the authorities have themselves reduced the punishment order of withholding of increments to three then the other punishment of non-consideration of promotion till 2016 is not only harsh but disproportionate to the finding of guilt, which is not in absolute term.

In the opinion of the Court, such a punishment of debarring the petitioner from consideration for promotion till 2016 is shocking to the conscience and, therefore, required to be quashed. Whatever fate the petitioner has to suffer due to punishment of withholding of three increments will come to visit him but that will be counted in terms of the circular of the State Government, which does indicate that it will relate back to the period to which the delinquent was charged with.

Writ application is allowed to the extent indicated above.

(Ajay Kumar Tripathi, J)

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