

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7024 of 2014

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Mustaf Hafizur Rahman Son of Abdur Rahman, Resident of Village Masna, P.O. Masna, P.S. Radhanagar, District Sahebganj (Jharkhand)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner, Department General Administration, Government of Bihar, Patna
2. The Commissioner, Purnea Division, Purnea
3. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
4. The Under Secretary, General Administration Department, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli

For the Respondent/s : Mr. Awanish Nandan Sinha, GP-XI

Mr. Shubhankar Sharma, AC to G.P.XI

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 23-01-2015

Heard the parties.

2. The petitioner is aggrieved by the resolution dated 26.08.2013 (Annexure-28) issued under the signature of the respondent- Joint Secretary, Department of General Administration, Government of Bihar, Patna, whereby the petitioner has been visited with the punishment of stoppage of three annual increments with non-cumulative effect in terms of Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (In short "Rules, 2005").

3. Learned counsel appearing on behalf of the petitioner while assailing the impugned order/ resolution has raised various points and has submitted that the impugned order is in teeth of the mandatory provisions of Rules, 2005. Therefore, according to him, the impugned resolution cannot be sustained in law.

4. Learned G.P.-XI appearing on behalf of the respondents though has opposed the prayer made on behalf of the petitioner but finally fairly conceded that the matter requires reconsideration and fresh decision.

5. On plain reading of the impugned resolution dated 26.08.2013 (Annexure-28) it appears that the disciplinary authority has disagreed with the enquiry report submitted by the enquiring officer and thereafter he awarded impugned punishment to the petitioner. Rule 18(2) of the Rules, 2005 provides that the disciplinary authority after receiving enquiry report in terms of Rule 17 of the Rules, 2005 is empowered to disagree with the findings recorded by enquiring authority on any article of charge so framed against the delinquent, but a reason is required to be recorded for such disagreement. Once the disciplinary authority disagrees with the report of the enquiring officer, then he is required to record his own finding on such charges if the evidence on record is found to be sufficient for coming to such conclusion. In the present case, evidently the disciplinary authority has decided to disagree with the report of the enquiring officer, but he has not given cogent reasons for such disagreement. Furthermore, after deciding to disagree with the enquiry report, he has not recorded his own findings with respect to articles of charge framed against the petitioner on the basis of the evidence collected during the course of enquiry, yet he has decided to award punishment to the petitioner. The impugned resolution dated 26.08.2013 is contrary to the mandate of Rule 18(2) of the Rules, 2005 and, therefore, it cannot be sustained in law.

6. For the reasons recorded above, the impugned resolution dated 26.08.2013 (Annexure-28) passed by the respondent Joint Secretary, is hereby set aside and quashed. However, this shall not

preclude the respondent authorities from passing a fresh order in accordance with law.

7. The writ petition stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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