IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16534 of 2008

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Chandra Mohan Mishra, son of Girindra Mohan Mishra, resident of Village – Koiri Tola, P S – Sherghati, District – Gaya, at present posted as Accounts Clerk, Tirhut Canal Division, Saraiya, District – Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Under Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Engineer-in-Chief cum Special Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Muzaffarpur.
6. The Superintending Engineer, Tirhut Canal Circle, Water Resources Department, Muzaffarpur.
7. The Executive Engineer, Tirhut Canal Division, Saraiya, District – Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyama Prasad Mukherji, Sr. Advocate
Mr. Shanti Pratap
Mr. Arvind Kumar Verma

For the Respondent/s : Mr. Sanjay Prasad, AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 14-05-2015

Petitioner was Accounts Clerk. He has superannuated on 31.1.2011. After a departmental enquiry held against the petitioner for the charges contained in Anneuxre-4, certain punishments came to visit him and the punishment order is Annexure-1, whose quashing petitioner is seeking.

2. Submission of the learned senior counsel for the petitioner is that for all the charges levelled against him for not obeying the order of transfer as well as absenting from the headquarters for a long period of time, explanation with supporting evidence was produced by the petitioner. The Enquiry Officer did not find the petitioner guilty of that charge as would be evident from Annexure-A

annexed with the counter affidavit of the respondents.

3. The second charge related to non-hading over the keys, the necessary ledger and accounts book and non-accounting of a sum of Rs.19618.75. Even for this charge, the petitioner had given a detailed explanation as to how the accounting was required to be done by the Executive Engineer because expenses were done by him and he is not willing to provide receipt for those expenses. Rather a detailed consideration with regard to the said charge has already been made but the Enquiry Officer concludes that the conduct of the petitioner comes within the zone of suspicion (***MAMLA SANDEH KE GHERE ME AA JATA HAI***)

4. Learned senior counsel therefore rightly points out that there is no clear and unambiguous finding of guilt with regard to second charge as well. Since suspicion cannot take the evidence of proof imposing punishment like, censure, withholding of three increments with cumulative effect, recovery of Rs.19,618.75 with 18 per cent interest as well as non-payment of salary except subsistence allowance for the period of suspension, is not only arbitrary but illegal per say.

5. The Court is not required to travel beyond the enquiry report for the reason that on the basis of the enquiry itself, the disciplinary authority has gone ahead and imposed punishment. It is not even the case of the respondents that the disciplinary authority disagreed with the finding despite material being available and issued any kind of notice of disagreement to the petitioner.

6. With no charges established against the petitioner with allegation no.1 and the second charge only fell within the zone of suspicion, the disciplinary authority has passed the order of punishment contained in Annexure-1.

7. Petitioner therefore has made out a case for interference with

Anneuxre-1 dated 14.7.2005. The same is quashed.

8. If by virtue of the said impugned order, follow-up action had been taken against the petitioner then all those action will be required to be annulled and petitioner would be entitled to all the benefits of service for the period the said order of punishment subsisted till his superannuation.

9. Writ application is allowed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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