

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15430 of 2007

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Awadhesh Kumar Dubey son of Late Ram Dharui Dubey resident of
village Barijawa P.S. Naugarh, Palamu (Jharkhand)

.... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna
2. The Inspector General of Prison, Govt. of Bihar, Patna
3. The Superintendent of Central Jail Muzaffarpur
4. The Superintendent of Sub Divisional Jail Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md.Khurshid Alam
Mr. Arun Kumar Bhagat

For the Respondent/s : Mr. Manish Kumar, G.P. 8

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

2 27-04-2015 Heard Mr. Khurshid Alam for the petitioner and Mr. Manish
Kumar, G.P. 8 for the State.

A counter affidavit has been filed on behalf of respondent nos.

1 to 4.

The petitioner during the relevant time was discharging the duty of the Head Warden at Hajipur Sub Divisional Jail. In the morning of 19.03.2001 three convicts lodged in the said jail escaped. Consequently, the official(s) who was/were posted at the jail were departmentally proceeded against. The petitioner being the Head Warden of the said jail was proceeded against departmentally and a charge memo was served on him on 16.03.2002 (Annexure-2). Prior thereto he was placed under suspension vide order dated 19.03.2001 (Annexure-1). The Superintendent of Shahid Khudiram Bose Central Jail, being the disciplinary authority, on conclusion of the departmental proceeding, passed an order on 25.09.2002 (Annexure-5)



inflicting as many as five punishments on him. Dissatisfied therewith, the petitioner filed an appeal in terms of Rule 4 of the Bihar and Orissa Subordinate Service (Classification and Control) Rules, 1935 before the Inspector General of Prison, Govt. of Bihar, Patna. From Annexure-8 enclosed to the writ petition which is the impugned order it appears that on a consideration of the appeal in the light of the instruction issued by the Director (Administration), Department of Prison the respondent Superintendent of the Central Jail, Muzaffarpur passed another order on 18.01.2005 whereby the punishments earlier inflicted on the petitioner were altered/modified. The petitioner was inflicted three punishments which includes withholding of five increments with cumulative effect, non consideration for grant of promotion for eight years & the period of suspension would not be treated as break-in-service. It was clarified that the petitioner would not be entitled to full salary save and except the subsistence allowance paid during the period he was kept under suspension.

Counsel for the petitioner while assailing the said order submits that the appellate order has been passed by the same authority who passed the order as the disciplinary authority. There are numerous flaws in the manner the departmental proceeding was conducted and concluded which caused serious prejudice to the petitioner rendering the proceeding ab initio void.

Counsel for the State, on the other hand, submitted that the order was passed by the respondent Superintendent, Central Jail, Muzaffarpur on the instruction of the appellate authority wherein it was directed that the copy of the enquiry report be furnished to the delinquent/petitioner and a fresh opportunity of filing show cause be granted to him and thereafter

dispose of the appeal. In such circumstances, the appellate order has been passed by the respondent Superintendent of the Central Jail.

I have considered the rival submissions of the parties and perused the materials on record.

It appears that there is no dispute that the disciplinary authority in the case of the petitioner was the Superintendent of the Central Jail who passed the final order in the departmental proceeding (Annexure-5)

The petitioner filed the appeal memo whereof is enclosed as Annexure-6. It appears therefrom that the appeal was addressed to the Inspector General of Prison, Govt. of Bihar, Patna. It has been argued by the counsel for the petitioner that the appellate authority in the case of the petitioner would be the Inspector General of Prison. However, it appears from the perusal of the impugned order (Annexure-8) that the appeal was disposed of by the same authority who was the disciplinary authority and the punishments inflicted on the petitioner were altered/modified. It is well-accepted proposition of law that an appeal cannot lie before the same authority. The order passed by the appellate authority who is the disciplinary authority is therefore ex facie bad in law. From the pleadings available on record and after considering the submissions of the parties it appears to this Court that the petitioner filed an appeal against the order dated 25.09.2002 passed by the respondent Superintendent, Central Jail (Annexure-5). From Annexure-B to the counter affidavit it appears to this Court that the appeal was disposed of by directing the disciplinary authority to take a fresh decision after serving a copy of the enquiry report on the delinquent/petitioner and obtaining his response thereon. In the light of the said order/instruction the disciplinary authority passed a fresh order on 18.01.2005 (Annexure-8)

whereby the punishments earlier inflicted on him were altered/modified. In my view, the ends of justice shall be subserved if the order dated 18.01.2005 (Annexure-8) is treated as the original order passed by the disciplinary authority on remand and the petitioner is granted an opportunity to file an appeal thereagainst before the competent/appellate authority for consideration and disposal in accordance with law.

Accordingly, the writ application stands disposed of by permitting the petitioner to file a fresh appeal as per the rule-provision against the order dated 18.01.2005 (Annexure-8) treating it to be the fresh order passed by the disciplinary authority before the competent/appellate authority. If such an appeal is preferred within four weeks from today the competent /appellate authority will examine/consider the same on its own merit and dispose of the same in accordance with law as quickly as possible.

(Kishore Kumar Mandal, J)

HR/-

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