

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4382 of 2015

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Md. Shafique, S/o Mabud Banks, R/o Village + Post- Kharial, District- Saharsa.
..... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. Secretary cum Commissioner, Board of Revenue, Bihar, Patna.
3. Commissioner, Kosi Division, Saharsa.
4. Collector, Supaul.
5. Deputy Development Commissioner cum Conducting Officer, Departmental
Proceeding, Supaul
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mallika Mazumdar
For the Respondent/s : Mr. GP29 - S.PASWAN

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 03-07-2015

03.07.2015

Heard learned counsel for the parties.

Petitioner, a Head Clerk, has been punished by the Collector, Supaul, despite enquiry officer exonerated him of all the charges, which were drawn up and is contained in Annexure-3. The punishments are censure and warnings. The punishment order of the District Magistrate is dated 19.12.2012 and is Annexure-6 to the writ application. In an appeal the Divisional Commissioner upheld the order of punishment. This order is Annexure-7 and dated 10.01.2014. Petitioner wants quashing of both the orders.



The obvious legal error in the order of the Collector seems to be that the punishment imposed upon the petitioner is without issuance of any notice of disagreement or the materials for such disagreement. Punishment order has come to visit the petitioner because the District Magistrate was not willing to accept the finding given by the enquiry officer.

It is a serious omission on the part of the disciplinary authority. If for this reason Annexure-6 goes, then the appeal also will be required to be interfered with.

It is made clear to the disciplinary authority, i.e., the Collector, that he does have the power to disagree with the finding given by the enquiry officer, but that power has to be exercised by issuing a notice to the delinquent and pointing out the reasons from the available material of the enquiry as to how the enquiry officer has reached a wrongful conclusion. Since this power has not been exercised by following the procedure even laid down not only in various decisions of the Hon'ble Apex Court, but even procedure prescribed under the Bihar CCA Rules, 2005, as amended from time to time. The impugned orders are vulnerable.

Writ application is allowed. Annexures - 6 and 7 are quashed. Matter is remanded back to the District Magistrate to act in accordance with law. Petitioner is entitled to a notice of disagreement.

(Ajay Kumar Tripathi, J.)

