IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17349 of 2014

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1. Durgesh Kumar S/o Late B.N. Rai residing near R.P.S. School Bailey Road Opposite Allahabad Bank, Raghunath Path, Patna, P.S. Rupaspur, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Chairman- cum- Member Board Revenue, Bihar, Patna
3. Excise Commissioner, Department of Registration, Excise and Prohibition, Bihar, Patna
4. Deputy Commissioner Excise, Tirhut- cum- Saran Division, Muzaffarpur
5. Secretary to Excise Commissioner, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha

For the Respondent/s : Mr. Ranjeet Kumar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 18-03-2015

Petitioner is an Excise Sub Inspector. He came to be proceeded against for failure to perform his duties by not maintaining effective control as well as maintaining the standards of country liquor, which was being bottled and marketed by one Nagendra Prasad Liquors, Sasaram. The enquiry officer conducted the inquiry and the report is Annexure- 7 dated 17.10.2013. The report exonerates the petitioner absolutely. When the file was dealt with departmentally, surprisingly the enquiry officer, who also happens to be Assistant Excise Commissioner, made a suggestion in the file that though benefit of doubt can be given to the petitioner but one increment without cumulative effect can be withheld. The above suggestion was accepted even at the level of the Excise

Commissioner and the punishment came to visit the petitioner. The said order issued under the signature of the Secretary to Excise Commissioner is dated 27.3.2014 and is Annexure- 2 to the writ application. Appeal filed by the petitioner before the Member, Board of Revenue came to be rejected on 14.8.2014. Petitioner wants quashing of both Annexures 1 and 2.

Submission of the counsel for the petitioner is that both the decisions suffer from patent illegality in the sense that when the enquiry officer exonerated the petitioner of all the charges, the natural corollary should have been exoneration of the petitioner on all counts. There was no occasion for imposing any punishment even it was of a minor kind. If the disciplinary authority felt that there were adequate materials available from the enquiry report and the enquiry, a notice of disagreement should have been issued to the petitioner with those materials and after response of the petitioner thereto, there could have been an occasion to take a decision with the kind of punishment which should visit the petitioner. Nothing of that kind has been done.

Petitioner has annexed the departmental notings, which are available at page 40 of the writ application where during the course of dealing the file at various levels such a suggestion of imposing a minor punishment was made and accepted.

It is a unheard kind of procedure, which has been adopted by the disciplinary authority and the position not being contradicted as such in the counter affidavit, this may not do, for the reason that the procedure laid down and the rules of natural justice have to be followed as is the consistent opinion of the courts right from decision in the case of ***Punjab National Bank v. Kunj Behari Misra, reported in AIR 1998 SC 2713***. That decision and law has not undergone a change.

In view of the same, both Annexure- 1 and Annexure- 2 are required to be quashed and are quashed. However, if the disciplinary authority wants he can still give a notice of disagreement and proceed in accordance with law.

Writ is allowed in terms of above.

(Ajay Kumar Tripathi, J)

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