

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6431 of 2014

Uday Kumar Singh, S/o Late S.S.P. Singh, Resident of Village Ratauli, PS. Pipra,
Distt. Supaul (Bihar), At- Present Posted as the Deputy Director Panchayat Raj,
Patna Division, Patna

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna, Bihar
2. The Secretary, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna, Bihar
3. The Joint Secretary, Department of General Administration, Govt. Of Bihar, Old Secretariat, Patna, Bihar
4. The Secretary, Department of Personnel & Training (DOPT), under the Ministry of Personnel, Public Grievance & Pensions, Govt. of India, New Delhi
5. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110069
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
7. The Principal Secretary, Department of Rural Development, Govt. of Bihar, Patna, Old Secretariat, Patna
8. The District Magistrate of Araria at Araria, Bihar

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Suresh Pd Singh No.1
Ms. Kumari Rashmi

For the Respondent/s : Mr. Anil Kumar Sinha, GA-9
Mr. Kaushal Kumar Jha
Mr. Anshuman Singh

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 11-03-2016

The petitioner filed copy of second show-cause which inadvertently could not be annexed to the writ application. Let the copy of second show-cause be kept on record.

Heard counsel for the petitioner as well as counsel for the respondents.

The petitioner is a member of Bihar Administrative Service. He was posted as Deputy Development Commissioner in



Araria in the year 2009. He was departmentally proceeded for the charges contained in Annexure-4. In short, the charge was that the petitioner failed to take notice that minimum work was performed under different Schemes of the Government including Indira Awas Yojana. However, he remained indifferent and neither took actions against the erring persons or took steps to accelerate the working of the scheme. The money allotted for the said Schemes got squandered. The Inquiry Officer, on completion of the inquiry, exonerated the petitioner of the charges. At one instance, the Principal Secretary on 07.08.2012 accepted the report of the Inquiring Officer which fact would appear from Annexure-9. However, some queries was made with respect to irregularities committed under the Indira Awas Yojan for the period 2002 to 2007 by Hon'ble the Chief Minister. It was the case of the petitioner that he was nowhere concerned with the said Schemes. The Disciplinary Authority differing with the view of the Inquiry Officer, issued second show-cause vide letter, dated 09.11.2012, which, according to the petitioner, was served upon him on 06.05.2013. The petitioner submitted his explanation to the same. However, not being satisfied with the show-cause reply, the Disciplinary Authority inflicted punishment of Censor and stoppage of two increments with cumulative effect vide order dated 28.10.2013 (Annexure-13 at page 112) which is impugned in this writ application.

The petitioner has raised two issues. He submits that the Disciplinary Authority, on the basis of inquiry report, had already made his mind to punish the petitioner. Even the quantum of punishment was decided against him prior to giving show-cause. In such circumstances, learned counsel submits that issuance of second show-cause was a mere repetition.

Learned counsel for the State submits that at the stage of issuance of second show-cause, it is permissible to inflict the tentative punishment. In support of his submission, learned counsel has relied upon the decision of Hon'ble Apex Court in the case of S.L. Narula Vrs. Union of India and others, reported in 2011 (4) SCC 591.

I have heard learned counsel for the parties.

It is well within the right of the Disciplinary Authorities to differ with the findings and opinion of the Inquiry Officer for their tentative reasons. In case the Disciplinary Authority differs with such findings, he has to set out his reasons for differing with such report and it is further required to forward a copy of the inquiry report along with his views to the delinquent for his response. In the instant case, I find that the Disciplinary Authority while differing with the findings recorded by the Inquiry Officer had even suggested quantum of punishment before issuance of the very second show-cause.

In my view, the determination of quantum of punishment

would be suggestive of the fact that the Disciplinary Authority has made up its mind to punish the petitioner though the inquiry report was in his favour. As such, case relied upon by the learned counsel for the State would not be applicable in the facts of the instant case. In this view of the matter, quantum of punishment suggested by the Disciplinary Authority in Annexure-13 is not sustainable and is accordingly set aside. Consequently, the impugned punishment emanating from Annexure-13, is too not sustainable and also set aside.

The matter would proceed afresh from the stage of issuance of second show-cause. The writ petition is allowed to the extent mentioned above from the stage of issuance of second show-cause.

(Samarendra Pratap Singh, J)

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