

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12624 of 2008

Manoj, Kumar Chaudhary, son of Shri Mangan Chaudhary, resident of village Agardih, P.S. Simri, Bakhtiarpur, District Saharsa

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna
2. Chief Secretary, Govt. of Bihar, Patna
3. Secretary, Home (Special) Department, Bihar, Old Secretariat, Patna
4. Deputy Secretary, Home (Special) Department, Bihar, Secretariat, Patna
5. Inspector General of Prisons, Bihar, Patna
6. Special Secretary, Home (Special) Department

.... Respondents

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Adv.
Mr. Shailendra Kumar Sinha, Adv.

For the Respondent/s : Mr. P.K.Verma, AAG3
Dr. Mankeshwar Tiwari, AC to AAG3

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 16-09-2016

Annexure 4 is the order of punishment dated 25th of August, 2004. This came to visit the petitioner for a set of charges, which is primarily related to escape of certain prisoners from the judicial custody of the petitioner, who was the Jail Superintendent of Sub-Jail, Jamui at the relevant time.

Nature of punishment is censure and withholding of three increments with cumulative effect.

Petitioner pleaded in the writ application in emphatic manner that award of punishment has been made without supply of enquiry report or service of a second show cause upon the petitioner, the



punishment order itself becomes vulnerable and cannot be sustained. Since the petitioner was emphatic in such assertion in the writ application, the Court decided to call for the original record relating to the enquiry to verify things. At least both the submissions seem to be correct because neither the enquiry report was furnished to the petitioner so that he could put up his proper defence as well as second show cause notice was not at all served or issued upon the petitioner.

Learned Senior counsel, namely, AAG3, representing the State, submits that there is onus upon the petitioner to show that what prejudice has been caused due to non-furnishing of the enquiry report or second show cause.

The facts being what it is, the Court is of the opinion that non-supply of the enquiry report as well as non-issuance of second show cause before punishment are vital omissions and serious prejudice is caused if a delinquent is denied either of the two opportunities, which is part of the process of imposition of punishment upon a delinquent.

In view of above and the facts not being in dispute any more, the impugned order of punishment, contained in Annexure 4, stands quashed. However, the matter is remanded back to the disciplinary authority and since copy of the enquiry report has now been served alongwith counter affidavit, the petitioner would proceed accordingly.

He will be given an opportunity to explain himself and if the stage of second show cause is reached, the same will be issued to the petitioner and thereafter a fresh decision would be taken.

Before parting, the Court would like to remind the disciplinary authority that since it is a very old matter, it will be in the interest of administration as well as the petitioner that an early decision be taken preferably within a period of six months from the date of petitioner filing his reply to the enquiry report before the disciplinary authority.

Writ application is allowed with the above direction.

(Ajay Kumar Tripathi, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.9.2016
Transmission Date	NA