IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.375 of 2015

==

1. Mahadeo Ram Son of Late Mangal Ram Resident of Village- Barhulia, Police Station- Jiradai, District -Siwan at present posted as Assistant Marauna Anchal, Sub Division -Nirmali, District - Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Disaster Management , Bihar, Patna.
2. The Commissioner , Koshi Division , Saharsa.
3. The District Magistrate, Supaul.
4. The Deputy Development Commissioner, Supaul.
5. The Sub Divisional Officer,Supaul
6. The Deputy Collector, Establishment , Supaul.
7. The Circle Officer, Chhatapur Block, District - Supaul.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Prabhakar Tekriwal, Adv.
Mr. Shashi Dhar Jha, Adv.

For the Respondent/s : Mr. Rajesh Kumar Sinha, A.C. to G.P.23

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-09-2016

The petitioner is aggrieved by the order dated 21.12.2013 passed by the Commissioner, Koshi Division, Saharsa in Service Appeal No. 485 of 2013 whereby the appeal has been dismissed and the order imposing penalty passed by the District Magistrate, Supaul bearing memo No.1318 (2) dated 14.9.2012 has been confirmed. The order of penalty visits the petitioner with the punishment of reduction in pay scale at the initial stage of Rs. 5200-20200 with further stipulation that the petitioner would not be entitled to any future increments. The petitioner is also aggrieved by the order bearing Memo No.1341-2 dated 19.9.2012 of the District Magistrate, Supaul whereby his pay and allowance has been reduced to the subsistence allowance drawn by the petitioner during the suspension period.

The petitioner at the relevant time was posted as Head Clerk at the Circle, Chhatapur in the district of Supaul. It is during the natural calamity faced by the district in the year 2008 that certain issues of financial irregularity transpired in the matter of distribution of flood relief and which led to initiation of departmental proceedings against the persons held responsible inclusive of the petitioner. In so far as the petitioner is concerned, a chargesheet was served upon him, a copy of which is placed at Annexure-2. The petitioner filed his reply to the charges. An enquiry was held with the Deputy Development Commissioner as the Enquiry Officer while the Circle Officer was appointed as Presenting Officer. The Enquiry Officer-cum-Deputy Development Commissioner, Supaul submitted his report dated 5.7.2012, placed at Annexure-3 holding the petitioner guilty of the charges. The District Magistrate, Supaul vide his order bearing Memo No. 1318-2 dated 14.9.2012 imposed the penalty in question, copy of the same is present at Annexure-4. The District Magistrate by a subsequent order bearing Memo No. 1341-2 dated 19.9.2012 while revoking the suspension of the petitioner has restricted his pay and allowances for the said period to the subsistence allowance drawn by him. The petitioner feeling aggrieved preferred appeal before the Divisional Commissioner, Koshi Division and which has been dismissed vide order passed on 21.12.2013 impugned at Annexure-6. The petitioner is before this Court questioning the orders of penalty as affirmed by the appellate authority.

Mr. Prabhakar Tekriwal, learned counsel has appeared on behalf of the petitioner while the State is represented by Mr. Rajesh Kumar Sinha, A.C. to G.P.23, on the directions of the Court, the records of the departmental proceedings has also been produced.

The charge sheet is present at Annexure-2 and lists 5 charges against the petitioner which runs as under:-

(i) Failure to maintain the cheque issue register.

(ii) Failure to maintain the cheque in stock register and the cheque distribution details.

(iii) Disappearance of cheque books.

(iv) Failure to maintain the account books regularly.

(v) Allowing the used and unused cheques to remain in the custody of the staff.

Mr. Prabhakar Tekriwal learned counsel for the petitioner in reference to the charges has submitted that the petitioner has given his explanation to each of the charges and which has been accepted by the Presenting Officer who has not contested the explanation given by the petitioner. He submits that despite the position, the Enquiry Officer has upheld the charges. According to Mr. Tekriwal, the matter relates to distribution of relief during the flood calamity which took place in the year 2008 and although the petitioner was not connected in any manner with the distribution of relief yet merely because he happens to be the Head Clerk in the Circle Office that he has been roped in the present case. According to Mr. Tekriwal the issue and distribution of cheques so issued as well as maintaining of the stock of used and unused cheques are concerned, this duty was to be carried out by the staff especially authorised in this regard and not the petitioner. According to Mr. Tekriwal, the petitioner has been made an escape goat merely because some financial irregularities have taken place in the distribution of flood relief and owing to the status of the petitioner as a Head Clerk that he has also been held responsible. Mr. Tekriwal has made reference to a three Member Committee comprising of the Special Secretary, the Director, Agriculture and the Deputy Secretary, Disaster Management Department to submit that the irregularities in the distribution of cheques, has not been attributed to the petitioner. It is his submission that although the nature of involvement of the petitioner as the Head Clerk and of the Circle Officer as the Head of the office is the same and nothing individual has been attributed upon them except supervisory failure and even when the Enquiry Officer specifically pinpoints the person held responsible for the misuse of the cheques, while the Circle Officer has been let of with a minor penalty of stoppage of increments with a non cumulative effect, the petitioner's pay has been brought down to the initial pay scale. Mr. Tekriwal to support his argument has referred to the order imposing penalty on the Circle Officer dated 2.3.2012 placed at Annexure-7.

The arguments of Mr. Tekriwal has been contested by Mr. Sinha learned counsel for the State and who submits that the petitioner holding the post of Head Clerk in the Circle Office, any irregularity which has taken place, has to be shared by the petitioner and he cannot wriggle out of the situation by submitting that he had no role in the distribution of flood relief. He submits that although the Presenting Officer has not chosen to contest the explanation given by the petitioner but this would not preclude the Conducting Officer from examining the charges in the background of the evidence on record and it is in consideration of the materials on record and the status of the petitioner in the Circle Office, that the penalty in question has been passed and which suffers from no infirmity. He has referred to the enquiry report to submit that the petitioner was given sufficient opportunity to defend himself and the Enquiry Officer's report is based upon the records. He submits that the Disciplinary Authority and the Appellate Authority having examined the issue raised by the petitioner, have imposed the penalty in question which is not disproportionate to the charge established on the petitioner.

I have heard learned counsel for the parties and I have perused the records.

The charges on the face of it are rather serious. Charge Nos. 1 and 2 relates to non maintenance of the cheque issue register as well as the register relating to cheque in stocks and the cheques distributed. Charge no. 3 is even more serious for it relates to the disappearance of cheques. In my opinion, the petitioner holding the posts of Head Clerk in the Circle Office, he can neither feign ignorance for such irregularities committed on such magnitude nor can he wriggle away from his responsibility of ensuring the maintenance of accounts and documents having financial implications. The Enquiry Officer has considered the explanation of the petitioner but has held him responsible for the reason that the petitioner has failed to exercise supervisory control and was not even aware about the missing cheque books rather it is only after the charges were framed that he has proceeded to offer explanation which would not condone his casual and negligent attitude which has led to financial irregularities. In my opinion, all the five charges which have been set up against the petitioner is on his failure to be alert to his duty and owing to the negligent and casual attitude of the petitioner in discharge of his duties as the head assistant in the Circle Office. By shouldering responsibility on the Anchal Nazir or the Circle Officer or the Revenue Karamcharis, it does not put an end to the questions left unanswered by the petitioner as to his failure to oversee that all papers connected with flood relief having financial implications are updated and are complete in all respects. Even if the charge of misuse of the disappeared cheques, has been fixed on the Revenue Karamcharis yet the very fact that the petitioner was the Head Clerk in the Circle Office but was neither vigilant on the ongoings in the office nor took steps to prevent misuse or disappearance of cheques connected with flood relief nor initiated any action against defaulting staff in the matter of missing cheques or upkeep of registers relating to financial accounts, he cannot question the proceedings either on merits or on the issue of quantum of punishment.

Although reliance has been placed by Mr. Tekriwal on the 3 Member Committee report but in my opinion, even the said report, in no manner comes to the aid of the petitioner. In fact the recommendation is otherwise.

For the reasons and discussions aforementioned, I am not persuaded to interfere with the order of punishment either on merits or on quantum.

The writ petition is dismissed accordingly.

Let the records of the disciplinary proceedings be returned to Mr. Rajesh Kumar Sinha, A.C. to G.P.23.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	9-9-16
Transmission Date	