

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12854 of 2013

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Surendra Prasad Yadav Son Of Late Tapasi Prasad Resident Of Gokhula, P.S. -
Shikarpur, District - West Champaran Petitioner

Versus

1. The State Of Bihar Through The Collector Of The District - West Champaran,
Bettiah
 2. The Commissioner, Tirhut Division, Muzaffarpur
 3. The Deputy Collector (Establishment), West Champaran, Bettiah
 4. The Deputy Collector, Land Reforms, Bagaha-Cum-Conducting Officer, West
Champaran Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 17-05-2016

The petitioner seeks quashing of the order issued vide memo no. 09 dated 4.1.2012, passed by the District Deputy Collector (District Establishment), West Champaran, which was confirmed by order, dated 11.12.2012, passed by the Commissioner Tirhut Division, Muzaffarpur passed in Service Appeal No. 23 of 2012.

2. The petitioner was initially posted as Halka Karmachari under Chainpattia Anchal in the District of West Champaran in the year 2007. In the same year, flood in the region caused heavy damage to houses and properties. The Government launched a scheme namely, "Mukyamantri Aawas Yojana" to rebuild houses of persons damaged due to heavy flood. The petitioner being Halka Karmachari of Halka No.10, Mauza Kharg Pokharia under



Chanpatia Anchal was directed to prepare a list of persons, whose houses were damaged due to heavy flood. It is alleged that on petitioner's wrong verification report, one Islam Khan succeeded in getting payment of Rs.24,000/- for reconstruction of house in place of Nabab Khan, whose house was selected for repair in the name of his mother. Petitioner was departmentally proceeded in the year 2010 as on account of callousness in verification of beneficiaries, one Islam Khan received money in place of one Nabab Khan for repair of the house. However, the enquiry officer did not hold the petitioner guilty of the charges. The enquiry report was forwarded to the disciplinary authority for follow up steps. The disciplinary authority after issuing 2nd show cause, passed final order of warning with further direction that the petitioner would not get anything except subsistence allowance for the period he remained under suspension. An appeal filed too was dismissed by the Commissioner, Tirhut Division, Muzaffarpur.

3. The petitioner has assailed the impugned proceeding on a number of grounds. He submits that the 2nd show cause notice was issued to him without differing with the findings recorded by the enquiry officer. He next submits that the punishment order has traversed beyond the contents of charge, contained in Memo dated 5.7.2002, (Annexure 2). Furthermore, as warning is not a

punishment, the disciplinary authority should have allowed full salary for the suspension period in stead of allowing subsistence allowance.

4. State has justified the impugned action.

5. I have heard learned counsel for the parties.

6. I am unable to agree with the submissions of the learned counsel for the petitioner that the disciplinary authority without differing with the findings of the enquiry report has issued 2nd show cause. The 2nd show cause notice reflects that the disciplinary authority has disagreed with the findings of the enquiry officer and has mentioned reasons for the same. As such, the contention of the petitioner, that no reason was recorded by the disciplinary authority while differing with the enquiry report, is baseless and devoid of merit. Other contention of the petitioner, that the punishment order has traversed beyond the contents of charge memo, is too misconceived. This takes me to the other issue whether the respondents erred in not allowing full salary to the petitioner for the period of suspension other than subsistence allowance. Petitioner's contention is based on the premises that as warning is not a punishment, respondents could not have curtailed his full salary for the suspension period.

7. In my view, submission of the petitioner is once again

to be noticed, to be rejected. It is not in dispute that the disciplinary authority, on consideration of materials on record, has found the petitioner guilty of negligence, as such, the disciplinary authority was within his right to pass order of punishment in proportion to the offence committed by him. The disciplinary authority was within his right not to allow the payment of full salary for the period, the petitioner has remained under suspension merely because no specific punishment has been awarded against the petitioner. The disciplinary authority is not precluded for not allowing full salary for the period under suspension. The matter would have been different, if the disciplinary authority had exonerated the petitioner of charge.

8. In view of above foregoing reasons, I do not find any merit in this writ petition. It is dismissed accordingly.

9. It goes without saying that if the subsistence allowance has not been paid to the petitioner, same would be paid within a period of three months, otherwise the petitioner would be entitled to the interest

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	10.6.2016
Transmission Date	10.6.2016