

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.306 of 2015

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Mahfuz Alam @ Mahfooz Alam S/o Md. Sadullah resident of village - Bishnupur,
P.S. Chatti Deo, District- Aurangabad, Presently Posted at the Post of Senior
Deputy Collector in the District of Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna
3. The Joint Secretary, Department of Rural Development, Government of Bihar, Patna
4. The Deputy Secretary -cum- officer on Special Duty, Department of General Administration, Government of Bihar, Patna
5. The Divisional Commissioner, Patna Division, Patna
6. The District Collector, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Prabhat Kumar, Advocate
For the Respondent/s : Mr. RAM BALAK MAHTO, Advocate General
Mr. Prabhu Narayan Sharma, A.C. to A.G.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-09-2016

Heard Mr. Prasoon Sinha, learned counsel for the petitioner
and Mr. Prabhu Narayan Sharma, Assisting Counsel to Advocate
General for the State.

The petitioner is aggrieved by the order of penalty bearing
Memo No. 452 dated 10.1.2013 passed by the State Government
under the signature of the Deputy Secretary cum Officer on Special
Duty whereby the petitioner has been visited with the punishment of
censure for the period 1996-97 and withholding of annual increment
with non-cumulative effect. A copy of the order of penalty is

impugned at Annexure-11 to the writ petition. The petitioner filed a review against the order of penalty and which also has been rejected by the State vide order bearing Memo No. 16592 dated 18.10.2013 impugned at Annexure-13. The petitioner being aggrieved is before this Court.

Mr. Sinha, learned counsel for the petitioner has questioned the impugned order on the following grounds:

- (a) The charges are stale and relate to the year 1993-94 until 1996-97 and was relied upon to initiate the proceedings vide resolution dated 20.7.2009 impugned at Annexure-8, almost a decade thereafter;
- (b) Although the order of penalty impugned at Annexure-11 imposes a punishment only for proven charges but a perusal of the enquiry report enclosed at Annexure-10 would show that none of the seven charges stood proved against the petitioner;
- (c) Even though the disciplinary authority has chosen to differ with the Enquiry Officer but neither any notes of disagreement was served on the petitioner nor the impugned order of penalty discusses any such disagreement with the finding of the Enquiry Officer.
- (d) The order of penalty is mechanical and non-speaking.

A counter affidavit is on record and Mr. Sharma has in reference thereto opposed the contention advanced by the petitioner to

submit that since irregularities had been found against the petitioner that has resulted in the imposition of minor penalty which suffers no infirmity.

I have heard learned counsel for the parties and I have perused the records. The writ petition is fit to be allowed on the issues so raised and contested by Mr. Sinha. The charges are stale and relate to some irregularities in execution of the scheme dating back to the period 1993-94 and 1996-97 and it took 10 years for the State to realize that it has not been executed by the petitioner to their satisfaction. Apart therefrom, the enquiry having been initiated the Enquiry Officer has submitted his report and has accepted each of the seven explanation given by the petitioner to the charges finding nothing to uphold either of seven charges so framed against the petitioner. The enquiry report is exhaustive, discussing each of the charges, the evidences relied upon by the Department to support the same, the opinion of the Presenting Officer and the contest of the petitioner. The Enquiry Officer in consideration of the materials on record has exonerated the petitioner from each of the charges so levelled against him.

Despite such position, the mechanical manner in which the order of penalty has been passed by the disciplinary authority, is eloquent from a bare reading of the order, for even when the Enquiry Officer has accepted the explanation of the petitioner to each of the

charge and has exonerated him from the charges yet the disciplinary authority proceeds to impose punishment on the petitioner for the proven charges when there are none. The order also nowhere discusses as to why in view of the enquiry report exonerating the petitioner, yet the disciplinary authority is persuaded to impose punishment. There is complete non-application by the disciplinary authority while imposing the punishment and even a review filed by the petitioner present at Annexure-12 discussing the issues, has given no different result when the same has been rejected vide order present at Annexure-13. The order impugned are bereft of reasons and reflect complete non application of mind.

Having heard learned counsel for the parties and for the discussions made hereinabove, the order of penalty impugned at Annexure-11 as well as resolution bearing Memo No. 16592 dated 18.10.2013 impugned at Annexure-13 are held illegal and are accordingly quashed and set aside and in absence of any expression by the disciplinary authority to differ from the enquiry report, I am also not persuaded for a remand of the matter.

The writ petition is allowed.

The consequences shall follow.

(Jyoti Saran, J)

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