

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.645 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 263 of 2014**

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Mahendra Thakur, Son of Late Prabhu Thakur, Resident of Village - Jagganpur,
Post Office - Jodhanbigha, District - Patna.

.... Appellant/Writ Petitioner

Versus

1. The State of Bihar, Through The Principal Secretary, General Administration,
Government of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The Collector, Sitamarhi
4. The Additional Collector (Revenue), Sitamarhi
5. The Senior Deputy Collector In - Charge General, Sitamarhi
6. The Deputy Collector In - Charge, Sitamarhi
7. The Block Development Officer, Charaut Block, Sitamarhi
8. The Block Development Officer, Sonebarsa Block, Sitamarhi
9. The Conducting Officer of the Departmental Inquiry, namely, Niroz Kumar
Bhagat, Senior Deputy Collector, Sitamarhi.

.... Respondents/Respondents

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Appearance :

For the Appellant/s : Mr. Ajey Kumar
For the State : Mr. Y P Sinha, AAG 15
Mr. R S Singh, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-08-2016

The challenge in the present Letters Patent Appeal is to an order dated 3rd February, 2015 passed by the learned Single Bench in CWJC No. 263 of 2014, whereby the writ petition was dismissed as the appellant prayed that he be permitted to invoke the jurisdiction of the appropriate authority in terms of Rule 27(2)(c) of the Bihar Government Servants (Classification, Control and Appeal) Rules,

2005 (hereinafter referred to as 'the Rules').

Though the order passed by the learned Single Bench is in effect withdrawal of the writ petition to avail the alternative remedy, but the counsel for the appellant vehemently argued that in fact the appellant has already availed the remedy of appeal. Therefore, there is no statutory remedy which could be invoked by the appellant. Thus, it is argued that this Court is bound to examine the legality and validity of the order passed in the writ jurisdiction.

We have heard learned counsel for the appellant and found that the appellant had availed the remedy of appeal against the order of dismissal passed by the competent authority. Though the appellant had the remedy of revision in terms of Rule 28 of the Rules, but since the appeal was filed and dismissed, availability of revisional jurisdiction may not be a good ground to dismiss the writ petition.

In view of the arguments raised, we have examined the legality and validity of the order of punishment dated 21st March, 2012 (Annexure -2) and the order in appeal dated 19th November, 2013.

The appellant was charge-sheeted for the reasons that 272 letters were not sent to different departments for more than six months. In response to the show cause notice, the stand of the appellant was of acceptance of such allegation though the appellant



offered explanation. The stand is that he was getting around 100 letters everyday which were required to be handled with care and caution and that after getting approval, the same were required to be sent to other departments. The stand is that he has not caused any delay intentionally as he has been sending from 20-25 letters to 40-45 letters every day. The admission of misconduct has been accepted by the learned disciplinary authority. Thus, the appellant was found to have committed misconduct in discharge of official duties.

A perusal of the reply filed by the appellant before the Enquiry Officer shows that the appellant has accepted the charge that 272 letters were not sent. The explanation is that he used to send some letters and that he had to discharge multifarious responsibilities. The fact is that large numbers of the official letters have not been sent. It is an act of misconduct. It is also the stand of the appellant that the letters have since been sent to other departments.

The allegation against the appellant is the non-communication of 272 letters. Such allegation stands accepted by the appellant before the learned Enquiry Officer. Once the allegation stands admitted, then it was for the appellant to prove the lack of misconduct before the Enquiry Officer. In view of the admission of the default, the Department was not required to prove anything more than what was raised by the State in the charge-sheet. The allegations

against the appellant are of utter carelessness and negligence in not sending a large number of letters. Therefore, we do not find any error in the order passed by the disciplinary authority.

In appeal, the claim of the appellant has been examined by the Commissioner, Tirhut Division, Muzaffarpur. The learned Commissioner has found that the appellant has acted quite negligently in performing his official duties and that he is liable to be punished. The Commissioner found that there is no illegality in the departmental enquiry and in the order passed by the disciplinary authority. Consequently, the appeal was dismissed.

The order of punishment is based upon the admission of the appellant in reply to the charge-sheet. Admittedly, the appellant has not sent 272 letters for further action. For such contumacious conduct, the order of discharge cannot be said to be unjustified when the appellant has failed to discharge the official responsibility of sending letters. The argument of the appellant that no evidence was produced before the Enquiry Officer or that the order of punishment is harsh and inequitable does not merit interference as well. The order of punishment is based upon admission of the appellant regarding non-sending of 272 letters to other departments. Therefore, the production of the witness was not warranted as on the basis of admission of the appellant, the Enquiry Officer has given his finding based on the

admission of the appellant.

The argument that the order of punishment is disproportionate to the misconduct again does not warrant any interference. In the matter of punishment, this Court in exercise of its power of judicial review will not examine the quantum of punishment. The Court can interfere only if the punishment is shockingly disproportionate to the misconduct proved. However, in the present case, the appellant has failed to carry out the primary responsibility itself of dispatching letters for more than six months. For such misconduct, to maintain discipline in the department, the order of punishment which was passed against the appellant, cannot be said to be unjustified or illegal.

We do not find any merit in the present Letters Patent Appeal. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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