IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2668 of 2014

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Ram Udgar Mahto, Son of Late Dular Chand Mahto, Resident of House No. 67, New Bye Pass Road, Near Anishabad Telephone Exchange, Police Station- Beur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, General Administration Department, Old Secretariat, Patna.
2. The Accountant General, Bihar, Patna.
3. The Commissioner, Tirhut Commissionery, Muzaffarur.
4. The District Magistrate, Madhubani.
5. The Additional Collector, Madhubani.
6. The Sub-Divisional Officer, Phulparas, District- Muzaffarpur.
7. The Block Supply Officer, Khutauna, District- Muzaffarpur.
8. The Circle Officer, Khutauna, District- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ansul, Advocate Mr.Javed Aslam
For the Respondent-State	:	Mr. Sajid Salim Khan, SC-25 Mr. Ram Pravesh Nath Tiwari, AC to SC-25
For the Respondent-A.G	:	Mr. Jitendra Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-09-2016

Heard Mr. Ansul, learned counsel appearing for the petitioner, Mr. Sajid Salim Khan, learned Standing Counsel No.25 for the State and Mr. Jitendra Kumar Roy, learned counsel appearing for the Accountant General.

The petitioner by way of this writ petition has prayed for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.14213 dated 2.9.2013 passed by the State Government, whereby the petitioner has been visited with the punishment of deduction of pension @ 15% per month for a period of five years in exercise of powers vested under rule 43(b) of the Bihar Pension Rules, 1950. A copy of the order of punishment bearing Memo No.14213 dated 2.9.2013 is impugned at Annexure-19 to the writ petition.

Facts of the case lie in a very narrow compass. A decision was taken by the petitioner for disposal of about 518.225 quintals of wheat which was rotting in the storage. The wisdom of the petitioner who held the post of Sub-Divisional Officer, Phulparas in the district of Madhubani, so exercised, was doubted, leading to the proceeding in question resulting in the order of punishment. Since the petitioner has superannuated while the proceeding was pending and thus the proceeding initiated under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') as amended from time to time stood converted in a proceeding under rule 43(b) of the Bihar Pension Rules, 1950 resulting in the order of punishment impugned.

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

The charge-sheet dated 31.8.2006 is impugned at Annexure-8 and the only charge against the petitioner is of disposing of 518.225 quintals of wheat at his own discretion without obtaining permission from the superior authority. Although the allegation against the petitioner also is of trying to provide unjust gain to the Circle Officer and of disposing the wheat in his collusion but the charge-sheet also notices that on objection being raised whatsoever be the quantum of loss, was deposited. As noted above, the petitioner held the post of Sub-Divisional Officer. The charge-sheet issued, denied the petitioner, a promotion to the post of District Magistrate. The matter was enquired into by an officer of the rank of Commissioner of a Division. The charges were obviously repelled by the petitioner and his submission is present at Annexure-13 which duly explains the action taken by the petitioner so doubted by the Disciplinary Authority. In my opinion there could not have been a better discharge of discretion than as reflected in the explanation given by the petitioner. Obviously the enquiry conducted by an officer as high in the rank of Commissioner of a Division could not have been resulted in any other opinion than to exonerate the petitioner of the charges and which is present in the enquiry report, a copy of which is placed at Annexure-14. The Commissioner on examination of the explanation given by the petitioner has though observed that there may be a procedural lapse in the decision-making by the petitioner but it was not accompanied with any element of misconduct. The enquiry report present at

Annexure-14 thus held the charges not proved.

The Disciplinary Authority was not satisfied with the report and directed for re-enquiry on the whims expressed in the letter dated 29.4.2011 present at Annexure-15 which in fact confirms the premeditated intention of the Disciplinary Authority as a decision on the charges is already reflecting in the said letter purportedly issued under rule 18(1) of 'the Rules' desiring a re-enquiry.

The desire of the Disciplinary Authority as found in the letter dated 29.4.2011 present at Annexure-15 asking for a re-enquiry did not lead to any different conclusion and the Enquiry Officer again reiterated his view vide opinion recorded in his report dated 23.1.2012. The second enquiry report dated 23.1.2012 was forwarded to the Disciplinary Authority in the General Administration Department vide covering letter dated 16.4.2012 present at Annexure-16, however it did not satisfy the Disciplinary Authority and a show cause was issued to the petitioner on 15.1.2013 under the signature of the Special Works Officer, General Administration Department purportedly under rule 18(3) of 'the Rules'. Now even before the petitioner can respond thereto, that the Disciplinary Authority has recorded a finding that the wheat was disposed of hurriedly without seeking permission from the District Magistrate.

Apart from the fact that the letter dated 15.1.2013 does not satisfy the statutory requirement of rule 18(3) for it neither rejects the finding of the enquiry officer nor expresses the tentative reasons for disagreement from the findings of the enquiry officer rather the Disciplinary Authority unilaterally proceeds to require an answer of the petitioner notwithstanding the report of the Enquiry Officer.

In my opinion the manner in which power is exercised by the Disciplinary Authority to seek a show cause on a enquiry report which exonerates the petitioner, is not in tune with the legislative intent of rule 18(3) of 'the Rules'. A finding of an enquiry officer is not an empty formality to be ignored and rule 18 of 'the Rules' very clearly recognizes the position.

There is a relevance attached to the finding of the enquiry officer which signals a conclusion of the fact finding exercise for this is the last stage for the delinquent to defend himself with the aid of oral and documentary evidence and whereafter it is only the conclusion of the Disciplinary Authority albeit in consideration of the report as well as the representation of the delinquent, if any, filed. A finding of an enquiry officer thus cannot be rendered nugatory as having been done in the present case. The letter dated 15.1.2013 purportedly issued under rule 18(3) of 'the Rules' is a whimsical action of the Disciplinary Authority, for it does not satisfy the statutory requirement. A plain reading of the show cause notice dated 15.1.2013 issued under rule 18(3) of 'the Rules', preconceives the result and since the petitioner in the meanwhile had superannuated on 31.1.2012 , he was visited with a punishment of recovery from his pension at the rate of 15% per month for a period of 5 years.

The order of punishment passed by the Disciplinary Authority is a perversity for it proceeds on the whims reflected in the notice issued under rule 18(3) of 'the Rules' with no discussion either on the conclusion drawn by the enquiry officer for exonerating the petitioner nor discussing the explanation given by the petitioner in justification to the action taken.

As I have observed though the petitioner was in the line for promotion to the post of District Magistrate and perhaps had he towed the usual 'obedient humble servant' approach, he would have succeeded, but a discretion exercised by him, in recognition of his status of a Sub-Divisional Officer, acting in the best interest of the revenue was doubted on his integrity and despite nothing present to support the doubt and even when the so called revenue loss was compensated, yet he has been penalized.

The order of punishment proceeds only on whims with no reasons assigned either on the explanation of the petitioner or the finding of the enquiry officer. In absence of any evidence to support that the decision taken by the petitioner was for securing unjust gains or to provide benefit to anybody in particular or was in contravention of departmental instructions, a mere difference in opinion or an element of irregularity in the decision making process, even if a procedural lapse, cannot come within the confines of the term misconduct for inviting a penalty. The petitioner, according to the Disciplinary Authority should have obtained permission from the District Magistrate before disposal of the wheat but did not choose to do so and thus, committed an irregularity. Now an irregularity simplicitor unless proved disastrous or done with oblique motive or to provide advantages pecuniary or otherwise to himself or sundry, cannot be held a misconduct. In the present case there is no evidence to support any misconduct by the petitioner except a procedural lapse as also upheld by the Enquiry Officer –cum- Commissioner, Tirhut Division.

For the reasons and discussions aforementioned the order of punishment passed by the State Government bearing Memo No.14213 dated 2.9.2013 cannot be upheld and is accordingly quashed and set aside. The consequences shall follow and the petitioner shall be entitled to all consequential benefits to which he is found entitled as on the date on which the proceedings in question had been initiated and the order impugned passed. The recovery, if any, made should be refunded to the petitioner and the entire exercise should be completed within a period of three months from the date of receipt/production of a copy of this order.

This writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.10.2016
Transmission Date	NA