

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12736 of 2013

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Laxami Yadav Son Of Late Laljee Yadav Resident Of Village- Bhaluahi, P.O.-
Atihar, P.S.- Sadar Darbhanga, District- Darbhanga, At Present Posted As A Clerk
Benipur Block District Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Patna
2. The Commissioner, Darbhanga Commissioner, Darbhanga
3. The Collector, District- Darbhanga
4. The Senior Deputy Collector-Cum-Controlling Officer, Darbhanga
5. The Deputy Collector, (EDP) Darbhanga
6. The Sub-Divisional Officer, Sadar Darbhanga
7. The Block Development Officer Singhwara, District- Darbhanga
8. The Block Development Officer, Benipur Block, District- Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad, Sr. Adv.
Mr. Pramod Kumar, Adv.
Mr. Raj Kumar Mishra, Adv.
For the State : Mr. Dev Kumar Pandey, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-12-2016

Heard learned counsel for the petitioner and counsel for the
State.

In this case, the petitioner is challenging the order of the
Collector, Darbhanga contained in Memo No. 1209 dated 1.6.2011,
whereby, the Collector has held that partly the charge has been proved
and, for that, the petitioner has been deprived of salary except
subsistence allowance for the period of suspension.

The petitioner was working as Nazir, for different alleged
misconducts, Praptra-Ka was issued against him and one of the charge



was that he was to return the money of Virendra Kumar Choudhary but, the same was returned after delay and, for that, the Block Development Officer had to face the adverse order including cost passed by the State Information Commission, Bihar, Patna and second imputation was that he remained absent without proper leave, he continued to file leave application which was never allowed. When the All India Institute of Medical Science had discharged the petitioner, advised him that he might contact the local DOTS Centre but, continued to take wrong plea, accordingly he remained absent from duty. Enquiry was conducted against the misconduct alleged in the Praptra-Ka by the Enquiry Officer, enquiry report was submitted by the Enquiry Officer vide report dated 8.6.2011, there the Enquiry Officer did not find any charge proved against him, gave report in favour but, the District Magistrate has recorded that partly the charge has been proved with regard to delayed handing over money, passed the impugned order, thereby deprived him salary except sustenance allowance for the period of suspension.

An appeal was filed by the petitioner before the Divisional Commissioner which was registered as Appeal Case No. 2 of 2012 and the appellate authority also rejected the appeal of the petitioner. Though in the order he has elaborately dealt with the cases of both sides when the time come for recording the findings on the basis of



material available on record but the finding was very cryptic without discussing the subject matter.

Learned counsel for the petitioner submits that the entire action is vitiated on several grounds, there is no adverse departmental report against him and if the Disciplinary Authority wanted to differ, in such circumstances, at least he should have been given the enquiry report including the tentative finding of difference of opinion and after receipt of reply of the petitioner, they could have passed the order. Learned counsel for the petitioner has placed reliance on the judgment of *Punjab National Bank & Ors. Vs. Kunj Behari Mishra* reported in (1998) 7 SCC 84. In that case, it has been raised that if the Disciplinary Authority differs with the enquiry report then the duty has been caste upon him to supply the enquiry report including the tentative findings of difference and seeking a show-cause and so much so that in the case of *Union of India & Ors. Vs. Mohd. Ramzan Khan* reported in (1991) 1 SCC 588, there also the Apex Court has held that after the 42nd amendment, second show-cause is no longer attached with Article 311 but service of enquiry report and seeking its reply is a part of natural justice, that has been affirmed in the case of *Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.* reported in (1993) 4 SCC 727, there also the Constitution Bench approved the view given in the Md. Ramzan Khan case (supra).



Admittedly, in the present case, the Enquiry Officer has given no finding against the petitioner with regard to handing over money to the person concerned. It has been recorded that the notice was given to the person to whom the money was to be given but, he did not turn up in time and the money, in cash, was handed over when the person appeared before the petitioner.

With respect to his absence, it has been recorded that the petitioner has remained absent on account of treatment at Delhi as the petitioner was suffering from tuberculosis and had consumed time for recovery of health and there is no adverse finding recorded either by the Disciplinary Authority or the Appellate Authority that money could not have been handed over to the person concerned on account of non-appearance even after notice was given to him and so much so that the petitioner remained under treatment on account of his suffering from Tuberculosis which takes time for recovery from the disease. When a person suffers from such disease, human touch should be given by the authority concerned and always the administrative action must see the attending circumstances faced by the junior officer. If a person is suffering from such a disease then he cannot be punished as he remained absent for treatment at Delhi. It is not required that the person must get treatment at the local level. If a person wants best treatment, he cannot be deprived from the treatment



from a hospital where he can have a faith for his recovery. If good health is always attached to the employee, only then, he would be able to discharge his duty properly. In absence of health, he will remain as a liability to the entire system.

In that view of the matter, the order of the Collector 1.6.2011 as well as the order of the Divisional Commissioner dated 24.5.2013 is set aside and a direction is given to the respondents concerned to pay salary to the petitioner for the period of suspension except what has already been paid.

With the aforementioned observation and direction, this application is allowed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2016
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