

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11801 of 2014

Shatrunjay Kumar Mishra S/o Late Chandramauli Mishra Resident of 3, Adarsh Path, Lal Babu Market, P.S. Shashtri Nagar, District - Patna, at present posted as Executive officer, Nagar Parishad, Aurangabad

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, General Administration Department, Govt. of Bihar
2. The Principal Secretary, General Administration Department, Govt. of Bihar, New Secretariat, Patna
3. The Joint Secretary, General Administration Department, Government of Bihar, New Secretariat, Patna
4. The District Magistrate, Rohtas
5. The Sub - Divisional Officer, Dehri, Rohtas

.... Respondents

Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Advocate
Mr. Rakesh Mohan Singh, Advocate
For the Respondent/s : Mr. Manish Kumar, GP-8

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 03-05-2016

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

The petitioner seeks quashing of the order, dated 23.05.2013, issued by the Respondent No. 3, by which his two increments have been withheld for two years without cumulative effect.

The short fact of the case is that the petitioner was posted as Circle Officer at Dehri, Rohtas. Charge was framed against him on 09.09.2003, alleging that he got cut a tree from the government land in the year 1999, without auction. The petitioner



submitted his reply on 25.11.2003. It appears that not being satisfied with the explanation of the petitioner, a departmental proceeding was initiated against him in the year 2008, being Departmental Case No. 27 of 2007. The Inquiry Officer exonerated the petitioner of the charge. On receipt of the inquiry report, the disciplinary authority awarded punishment of withholding two increments for two years without cumulative effect.

The petitioner has assailed the impugned order on two grounds. Firstly, the inquiry report was in his favour and as such, the disciplinary authority ought to have issued a show-cause, even before imposing minor punishment.

He next submits that the departmental proceeding was initiated against him at the instance of one, Beharu Rajak, who, at that time, was Joint Secretary in the Department of Personnel and Administrative Reforms. Tracing the background, the petitioner submits that he had rift with the then S.D.O., who was closely related to Beharu Rajak and also was posted in Rohtas as Additional District Magistrate between 2000 to 2003. It is further contention of the petitioner that the show-cause was sought from him in the year 2003, at the instance of Beharu Rajak, influenced by the S.D.O., who was his close relative. It so happened that the in the year 2006-2007, the said Beharu Rajak, came to be posted as Joint Secretary, Personnel and Administrative Reforms

Department, who played a pivotal role in initiating departmental proceeding against the petitioner, in the year 2007, over the same issues.

This Court would not go into the aspect of bias in absence of Beharu Rajak as being made a party Respondent in this case. As such, this Court would confine itself to Issue No. 1 raised by the petitioner.

In the counter affidavit, respondents state that punishment order was minor and as such, no show-cause was required to be issued.

In my view, if the findings in inquiry report are against the petitioner, the disciplinary authority would be within his right, in awarding minor punishment without issuing a show-cause. But in a regular departmental proceeding, if the inquiry report is in favour of the delinquent, then in such circumstances, a show-cause is imperative before awarding even minor punishment as one would be at a loss as for what one has been punished, though having been exonerated in departmental enquiry.

In view of above, the impugned order of punishment is not sustainable in law and the same is accordingly quashed.

Since the matter is an old one of the year 1999 and involves cutting of one tree on request of local residents, required for religious purposes, the matter is not relegated, for proceeding

afresh in the matter. As the order of punishment has been quashed,
the petitioner would be entitled to consequential benefits.

(Samarendra Pratap Singh, J)

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