IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No11128 of 2014

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Anand Kumar, Son of Late Ram Lakhan Sharma, Resident of Basari, Bodh Gaya, District- Gaya, at present posted as Assistant Commissioner, Excise (Incharge), Rohtas at Sasaram

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Excise, Prohibition & Registration, Vikas Bhavan, New Secretariat, Patna
3. The Special Secretary, Department of Excise, Prohibition & Registration, Patna
4. The Excise Commissioner, Bihar, Patna
5. Mr Vijoy Ranjan, BAS, Deputy Secretary, Excise, Prohibition and Registration, Government of Bihar, Patna
6. Mr Navin Kumar Mishra, Incharge Joint Commissioner of Excise, Government of Bihar, Patna
7. Mr Satyendra Kumar Sinha, Deputy Commissioner, Excise Patna-cum-Magadh Division

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr Sunil Kumar Singh, Advocate
For the Respondent/s : Mr LALIT LISHORE (PAAG)

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 01-12-2017

Heard counsel for the petitioner and counsel for the respondents.

2 One order dated 18.01.2013 was passed on the petitioner's earlier writ petition being *CWJC No 19778 of 2012* whereby, while quashing the earlier punishment order on technical grounds, this Court had given opportunity to the Principal Secretary of Excise and Prohibition Department to examine the matter afresh and draw up a proceeding, if it need be, after a proper charge sheet within a period of six months. Pursuant to the said liberty, one charge memo dated 26.04.2013 was served upon the petitioner by the Officer on Special Duty of the Department. The substance of the charge was that he used unparliamentary and objectionable language in course of some meeting. The petitioner responded to the same by Annexure 9. Thereafter, an enquiry report was submitted on 16.04.2014. Without serving a copy of the report, the petitioner submits that the disciplinary authority passed the impugned order dated 27.05.2014 inflicting punishment of withholding two annual increments without cumulative effect.

3 Counsel for the State has tried to justify passing of such order. In the counter affidavit, in paragraph 18, they had taken specific stand that copy of the enquiry report is not required to be served in view of the provisions contained in Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity, *the Rules*).

4 Counsel for the petitioner has drawn the attention of the Court towards Rule 19 of the Rules which prescribes the procedure for imposing minor penalties against the Government servants. The opening line thereof is as follows:

> *"Procedure for imposing minor penalties.-(1) Subject to the provisions of sub-rule (3) of rule 18, no order imposing on a government servant any of the penalties specified*

in clauses (i) to (v) of rule 14 shall be made except after- … … …"

5 This aspect of the matter has not been considered by the respondents while taking action against the petitioner and the punishment has been inflicted upon the petitioner without serving the copy of the enquiry report and allowing an opportunity to the petitioner as is contemplated under Rule 18 (3) of the Rules.

6 Since the said order of punishment suffers from procedural lapse and has been passéd in violation of principles of natural justice, the same cannot be sustained and is quashed.

7 The writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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