

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11003 of 2011

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Ajay Kumar Sinha Aged About 53 Years Late Awadesh Prasad Village
Jujhar, P.S. Saraiya, Dist. Muzaffarpur, Presently Posted At Block Supply
Officer, Rafiganj, Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Food And Consumer Protection, Govt. Of Bihar, Patna.
2. The Principal Secretary, Department Of Food And Consumer Protection, Govt. Bihar, Patna.
3. The Additional Secretary, Department Of Food And Consumer Protection, Govt. Of Bihar, Patna.
4. The Deputy Secretary Cum Officer On Special Duty, Department Of Food And Consumer Protection, Govt. Of Bihar, Patna.
5. The District Magistrate, Madhubani.
6. The Additional District Magistrate Cum Conducting Officer, Madhubani.
7. The Sub Divisional Officer, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate
For the Respondent/s : Mr. Ravi Verma, AC to GP-4

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 13-09-2017

Challenging the order of punishment dated
22.12.2010, issued by the competent authority imposing
punishment of stoppage of two increments with non-cumulative
effect, this petition has been filed. Even though various grounds



have been raised in the writ petition, the short question that requires consideration is as to whether once the petitioner is exonerated of the charges levelled against him by the Enquiry Officer in the enquiry conducted, without recording a finding of guilt after issuing show cause notice to the petitioner and hearing him, the punishment could be imposed by the Disciplinary Authority. The charge-sheet was issued against the petitioner on 26.11.2009 and two allegations were levelled against him who was working as Block Supply Officer: (i) that against the sanctioned quota of 1634 litres of Kerosene Oil to be given to the P.D.S. Dealer he has unauthorizedly increased the quota to 2513 litres and (ii) that for the victims of fire and burn injuries against quota fixed, the petitioner has granted 300 litres of Kerosene oil to the victims of fire and burn injuries without any authority. A departmental enquiry was conducted into the matter. The Enquiry Officer conducted his proceedings and submitted his report on 24.7.2010 vide Annexure B to the counter affidavit by Respondent No.7 and in the enquiry report, the Enquiry Officer has recorded a finding that the petitioner is not guilty of either of the charges levelled against him. In fact, it goes to say that there has been a system existing of providing 300 litres of Kerosene oil to the victims of fire and burn injuries and the petitioner has only followed this



system. Even though the petitioner was exonerated of the charges, surprisingly, without issuing any show cause notice to the petitioner, proposing to differ from the finding of the Enquiry Officer and recording an independent finding, the Disciplinary Authority by differing with the enquiry report and holding that the misconducts are proved, imposed the impugned punishment.

Once the Enquiry Officer exonerated the petitioner of the charges levelled against him, the only option available to the Disciplinary Authority under law was to record his own independent finding of guilt based on the evidence on record, but before doing so it was incumbent upon the Disciplinary Authority to issue notice to the petitioner, give him an opportunity of hearing, consider his explanation and defence and record a finding independent of the finding of the Enquiry Officer and thereafter proceed in accordance with law. This is the requirement of law laid down by the Hon'ble Supreme Court in the case of Punjab National Bank vs. Kunj Behari Misra, (1998) 7 SCC 84, and this procedural requirement of law having not been followed, the entire action is fit to be quashed on this ground alone.

Accordingly, this petition is allowed. The impugned order of punishment is quashed. Liberty shall be available to the



Disciplinary Authority to proceed in the matter from the stage of receipt of the enquiry report.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.9.2017
Transmission Date	

