

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10544 of 2011

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1. Bheem Prasad Singh S/O-Late Ram Eshwar Singh Vill-Ahile ,P.S-Narayanpur,Dist-Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar Through Secreatry Home(Special) Govt. Of Bihar Patna
2. The Inspector General Of Prison Bihar Patna
3. The Supdt. Of P-Rision Jhanjhanpur Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MD. KHURSHID ALAM, Advocate
For the Respondent/s : Mr. PRASHANT PRATAP, GP 6

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 25-08 -2017

Challenging the order of punishment, Annexure 6 dated 17.8.2009 imposing punishment of stoppage of three increments with non-cumulative effect on the petitioner, this writ petition has been filed. Even though various grounds are raised in the writ petition and by a cryptic reply evasive answer is given by the State without specifying anything. This writ petition has to be allowed on the simple ground that neither the show cause notice was issued to the petitioner nor the explanation submitted by the petitioner is available on record.

The matter is pending since 2011 and I am not inclined to adjourn the matter any further and, therefore, proceed to decide the issue based on the material available on record. The only relevant



material that is available on record is the punishment order dated 17.8.2009 and on a perusal of the same, it transpires that on the basis of some inspection conducted in the jail on 22.3.2009, show cause notice was issued to the petitioner and various other employees on 1.4.2009 and thereafter the impugned order of punishment has been passed. In the impugned order, para-2 of the same reads as under:

“सहायक कारापाल श्री भीम प्रसाद सिंह एवं उच्च कक्षपाल श्री श्याम सुन्दर झा, कक्षपाल श्री रामाकान्त मिश्र, कक्षपाल श्री सियाशरण पासवान, कक्षपाल श्री नरेन्द्र कुमार और कक्षपाल श्री खेमराज उरौव से प्राप्त स्पष्टीकरणों की समीक्षोपरान्त उनके विरुद्ध लापरवाही एवं कर्तव्यहीनता के प्रमाणित आरोपों के लिए उनकी तीन (3) वेतन वृद्धियों असंचयी प्रभाव से रोकने का दंड पारित किया जाता है।”

From the aforesaid, it is clear that in response to the show cause, the employees gave their explanation and the impugned order has been passed by holding that the explanation is not satisfactory. The punishment imposed upon the petitioner is penal in nature, a minor punishment under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 . Even for the purpose of imposing a minor punishment, a show cause notice has to be issued to the delinquent employee, his explanation or defence obtained and there has to be consideration of the explanation or defence, its acceptance or rejection by the competent disciplinary authority by showing application of mind and by passing a speaking



order recording of finding of guilt, in case the explanation is rejected, and thereafter comes the stage of imposing punishment.

On scrutiny of Annexure 6, it is seen that none of the aforesaid processes were followed while taking action against the petitioner. Neither the explanation and defence of the petitioner is considered nor is there any discussion of the defence of the petitioner nor is any finding recorded to say that the guilt is proved and the rejection of the defence or explanation of the petitioner.

That being so, the punishment order being in contravention of the requirement of law, *de hors* the principles of natural justice, this Court has no option but to quash the same. Accordingly, the impugned order of punishment dated 17.8.2009 is quashed.

The application is allowed.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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