

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6042 of 2014

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1. Nageshwar Yadav Son of Sri Kharagdhari Yadav Resident of Dighoy, P.S. -
Jamui, District Jamui At Present Posted As Principal, I.T.I. Gaya

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Labour Resource Department, Government of Bihar,
Patna
3. The Director Employment and Training, Govt. Of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Rakesh Kumar, Adv.

For the Respondents : Mr. Kameshwar Kumar, GP. XVII with Mr. Rajesh
Singh, AC to GP XVII

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 06-10-2017

Heard both sides.

2. The petitioner, in this writ petition, seeks quashing of order, dated 04.09.2013, contained in Memo No. 3241 (Annexure 9), by which three increments of the petitioner was stopped with non-cumulative effect. The review filed by the petitioner was also dismissed on 18.12.2013, as contained in Memo No. 4714 (Annexure 10).

3. The facts, in brief, is that while the petitioner was posted as In-Charge Principal, Industrial Training Institute, Munger, in the year 1997 he was departmentally proceeded for committing different irregularities in admission of the candidates of different categories. Enquiry Officer submitted his report on 26.08.2007, but, the disciplinary authority ordered for fresh enquiry without asking the petitioner to file his show cause. The petitioner moved this Court against the order of the disciplinary authority for initiation of a fresh



enquiry and this Court vide order, dated 01.04.2013, quashed the order for initiation of fresh enquiry and directed the disciplinary authority to pass order in accordance with law on the enquiry report. Thereafter, the disciplinary authority asked second show cause from the petitioner on 05.08.2013. The petitioner filed his reply on 17.08.2013 and stated that the second show cause is asked from him on 05.08.2013, but, the copy of the enquiry report is not served along with the second show cause.

4. The learned counsel for the petitioner submits that without furnishing the enquiry report, the order of punishment, even though the punishment is minor in nature, is not, at all, sustainable. Rule 18(2) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, says that if the disciplinary authority differs with the findings of the enquiry report, the disciplinary authority must give his finding differing with the findings of the Enquiry Officer on the basis of the evidence, available on record and, thereafter, served the enquiry report along with the finding of the disciplinary authority differing with the finding of the enquiry report and call upon the proceedee to show cause, but, the petitioner was neither served with the enquiry report nor the point of difference of the disciplinary authority with the findings of the enquiry report is given to the petitioner and, therefore, the order is vitiated on the ground of violation of principles of natural justice as the petitioner was not fairly heard. It is, further, submitted that the appellate order also does not disclose any reason for rejection of the petition of the petitioner.

5. On the other hand, the learned counsel for the State



contended that the disciplinary authority gave second show cause, but, when the attention of the learned counsel for the State is drawn to the show cause reply of the petitioner in which he specifically stated that the enquiry report was not given to him along with the show cause, the learned counsel for the State could not be able to show that the enquiry report was ever given to the petitioner.

6. After considering the submissions of the both the parties and on perusal of the record, I find that the petitioner has specifically stated in his show cause that the enquiry report was not given to him along with the show cause. The learned counsel for the State has not been able to show anywhere in the counter affidavit about the rebuttal of the statement of the petitioner. The learned counsel for the State has also not been able to show from the counter affidavit that the enquiry report was ever served to the petitioner at the time of asking show cause. Rule 18(2) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, mandates that upon receipt of the enquiry report under sub rule 23(1) of Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, the disciplinary authority, if differs with the findings of the Enquiry Officer must give his point of difference on the basis of the evidence available on record and cause to or serve a copy of the point of difference along with the enquiry report to the Government servant so that the Government servant may get opportunity to persuade the disciplinary authority that the findings recorded by the disciplinary authority is not based on the evidence available on record or the findings of the Enquiry



Officer is right, but, the disciplinary authority did not provide sufficient opportunity by not serving the enquiry report to the petitioner and thereby the order inflicting punishment by stopping three increments of the petitioner with non-cumulative effect is bad on the ground of violation of principles of natural justice and the review order also suffers from illegality as no reason has been assigned as the review was summarily dismissed.

7. This writ petition is **allowed** and the order, dated 04.09.2013, as contained in Memo No. 3241 (Annexure 9) and the order, dated 18.12.2013, as contained in Memo No. 4714 (Annexure 10) are **set aside**.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
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