

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6362 of 2014

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1. Birendra Kumar Ray Son Of Late Ganga Ray, Resident Of Village- Khaira Karbasin, Police Station- Sahar In The District Of Bhojpur.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Home Department, Government Of Bihar, Patna
2. The Principal Secretary, Home Department, Government Of Bihar, Patna
3. The Inspector General, Prison, Government Of Bihar, Patna
4. The Jail Superintendent, Special Central Jail, Bhagalpur
5. The Jail Superintendent, District Jail, Munger.
6. The Jail Superintendent, Central Jail, Purnia

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr. A.UJJWAL

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 29-08-2017

Heard both sides.

2. The petitioner filed this writ petition against the order dated 26.07.2013 contained in Memo No. 3776 (Annexure-1) passed by the Inspector General, Prison, Government of Bihar, Patna whereby punishment of stoppage of one increment of the petitioner with non-cumulative effect and consequently the petitioner shall not be entitled to get any allowance save and except subsistence allowance during the period of suspension.

3. Learned counsel for the petitioner submits that the order is absolutely bad and illegal. No charge was proved against the petitioner. The petitioner was departmentally proceeded in view of Letter No. 236 dated 12.02.2012 (Annexure-3) that the petitioner spreads rumors among the prisoners. There is lack of coordination among the prisoners on account of misbehaviour of



the petitioner. The petitioner did not properly behave with the prisoners. It is further submitted that on the basis of the aforesaid charge, Shri Pratap Narayan Singh, Superintendent, Central Jail, Purnea was made enquiry officer and Shri Nagina Mochi, Assistant Jailor, District Jail, Munger was appointed as Presenting Officer. The enquiry officer submitted his report stating that no charge against the petitioner was proved but the disciplinary authority remitted the matter to the enquiry officer for further enquiry on the ground that Anand Kumar Sinha who made allegation against the petitioner was not examined and cross-examined. Even thereafter, the enquiry officer submitted his report exonerating the petitioner from the charges leveled against him. The disciplinary authority, of course, inflicted the minor punishment but, did not give him any chance to show his innocence. It is further submitted that the petitioner was punished on a new charge that he is verbose which was not the charge before the enquiry officer.

4. Mr. Sunil Kumar, learned counsel for the petitioner submits that withholding of salary and other allowances except the subsistence allowance is not in accordance with Rule 11 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and Rule 97 of the Bihar Service Code which clearly stipulates that notice is mandatory before awarding any punishment to the government employee with regard to withholding of salary and other allowances of the suspension period but, in this case no notice was served upon the petitioner before passing the order of punishment.

5. Learned counsel for the State could not be able to show any material that any show cause was asked from the petitioner before inflicting the punishment.

6. I find force in the submission of learned counsel for the petitioner that, once the enquiry officer exonerated the petitioner from the charge



the petitioner should not have been inflicted even the minor punishment on a new charge. The stoppage of payment of salary and other allowances save and except subsistence allowance during the period of suspension should have been made in view of Rule 97 of the Bihar Service Code as well as the provisions as contained in sub-rules 3 & 5 of Rule 11 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 which clearly mandates that the disciplinary authority shall notice the government servants before withholding of salary and other allowances of the suspension period. Therefore, I am of the considered view that the order contained in Memo No. 2040 dated 22.04.2014 (Annexure-11 to the supplementary affidavit) passed by the appellate authority confirming the order of the disciplinary authority contained in Memo No. 3776 dated 26.07.2013 is not sustainable.

7. Thus, the writ petition is allowed. The order contained in Memo No. 2040 dated 22.04.2014 and the order of the disciplinary authority contained in Memo No. 3776 dated 26.07.2013 are set aside and the matter is remitted to the disciplinary authority to pass order afresh in accordance with law.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2017
Transmission Date	NA

