

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1938 of 2011
IN
Civil Writ Jurisdiction Case No. 1675 of 2010**

- =====
1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
 2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
 3. The Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar, Patna
 4. The Special Land Acquisition-Cum-Conduction Officer, Gandak Project, Muzaffarpur.

.... Appellant/s

Versus

Ram Janam Bhakta, S/O Late Ramdayal Bhakta, R/O Village + P.O.- Manpur, P.S.- Dighwara, District- Chapra, presently working as 'Mapak' in the office of Special Land Acquisition-Cum-Conduction Officer, Koshi Project, Sakri, Madhubani

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kr. Bhagat, AC to AAG-12

For the Respondent/s : Mr. Sanjay Kumar Verma, Advocate

Mr. Amrendra Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-09-2017

Seeking exception to an order dated 30.07.2010

passed by the Writ Court in C.W.J.C. No. 1675 of 2010, this appeal has been filed under Clause 10 of the Letters Patent. The respondent employee was punished vide order dated 03.09.2008, the appeal filed was dismissed on 01.12.2008 and the following punishments were imposed up on him:

“(a) Nothing beyond subsistence allowance



shall be payable for the period of suspension but which shall otherwise be counted for the purpose of pension;

(b) Stoppage of all promotions;

(c) Stoppage of three increments with non-cumulative effect and reverting him to a lower pay scale.”

2. Challenging the aforesaid punishment order, the writ petition in question was filed. The Writ Court found that with regard to three charges levelled against the writ petitioner, the enquiry officer, in his report dated 14.12.2007, held that charge no.1 and 2 are not proved. Charge no. 3 could only make out a suspicion against the petitioner and therefore the petitioner was exonerated of the allegations levelled by the enquiry officer. However, without issuing notice to the writ petitioner and without hearing him, the same was recorded by the disciplinary authority and the disciplinary authority recording his own finding imposed the punishment. The learned Writ Court found that without notice to the petitioner and without hearing him the dissent recorded by the disciplinary authority is unsustainable and interfered with the matter.

3. Before us, the ground canvassed is that in the Writ Court the respondents could not file counter affidavit. In fact, after the



expiry of time, received show-cause notice for dissent was issued vide Annexure-1 on 15.04.2008 and thereafter the impugned order was passed on 03.09.2008 and, therefore, it is stated that the requirement of law is complied with.

4. We have considered the aforesaid contention and find that after the enquiry officer has exonerated the employee of the charges levelled against him in his findings recorded on 14.12.2007 and the notice was issued to the petitioner vide Annexure-1 on 15.04.2008 though grounds were indicated, which reads as under for disagreeing the findings of the enquiring officer imposing the punishment:

“[1] निलंबनावधि में जीवन निर्वाह भत्ता के अलावे कुछ भी देय नहीं होगा, लेकिन इसकी गणना पेंशन प्रयोजनार्थ की जा सकेगी।

[2] सभी प्रकार के प्रोन्नति पर रोक।

[3] तीन (3) वर्षों के लिए असंचयात्मक प्रभाव से कालमान वेतन में निम्नतर प्रक्रम पर अवनति।”

5. Thereafter the petitioner submitted his detailed defence and explanation to the aforesaid show-cause notice vide Annexure-2, but in a casual manner except for holding that



explanation submitted by the writ petitioner cannot be accepted, the disagreement was recorded and the punishment was imposed, which is not in accordance with the requirement of law. Once the enquiry officer has exonerated the petitioner of the charges levelled against him and if the departmental authority wanted to disagree with the findings of the enquiry officer, he ought to have recorded a separate finding after issuing show-cause notice to the petitioner and after considering the explanation of the petitioner. The order to be passed by the disciplinary authority should show application of mind, evaluation of the reasonings given by the employee concerned, consideration of his explanation, its acceptance or rejection by a speaking order and thereafter recording a finding of guilt separately. All these have not been done in the impugned order (Annexure-1). Except for contending that a show-cause notice was issued to the petitioner on 21.05.2008, he submitted his reply on 06.06.2008, which is not found to be satisfactory, nothing has been served and the impugned action is taken. We are of the considered view that this does not meet the requirement of law. For recording a dissent there has to be consideration of the explanation and defence of the delinquent employee and thereafter comes the stage of passing speaking order evaluating it and recording findings. This being not done, the action



impugned cannot be sustained and we see no reason to make any indulgence in the matter. The appeal is, therefore, dismissed. However, liberty shall be available to the department to proceed in accordance with law from the stage of receipt of the enquiry report.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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