

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1127 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 13629 of 2013.

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The Principal Secretary, Department of Personal Administrative Reforms, Now
General Administration Department, Government of Bihar, Patna

.... Respondent / Appellant

Versus

1. Upendra Jha, Son of Late Nandu Jha, Resident of Flat No. 201, Dream Mansion
Apartment, Vijay Nagar, P.S. Rupaspur, Bailey Road, District - Patna 800014
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The Commissioner, Magadh Division, Gaya

.... Respondents / Respondents.

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Appearance:

For the Appellant:

Mr. Amish Kumar, Advocate.

For the State:

Mr. Kaushal Kumar Jha, AAG 8.

For the Respondents:

Mr. Amit, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-05-2017

In the matter of imposition of punishment of reduction of
pension by 5%, the learned Writ Court interfered with the matter of
punishment and recorded the following reason:

“It is well settled that if the disciplinary authority differs with the view taken by the Inquiry Officer, it is first to give an opportunity to the delinquent to file his response on the point of difference and only after considering the explanation of the delinquent, could have arrived at a tentative punishment, for which again a show cause was required.

In the instant case, the respondents has not given any notice before recording its final conclusion differing with the findings of fact of the Inquiry Officer and straightway taken a decision to punish the petitioner. As such, the show cause issued to the petitioner to file his response was a mere formality.



In this view of the matter, the impugned order dated 25.4.2013, as contained in Annexure-12, passed by the disciplinary authority is not sustainable in law and is accordingly set aside.

In the result, this writ application is allowed to the extent indicated above.”

The reason clearly shows that the learned Writ Court interfered into the matter as the procedure followed for imposition of punishment was in violation to the requirement of law and the principles of natural justice.

Learned counsel appearing for the State fairly stated that he does not dispute the aforesaid legal proposition but only wants that the learned Writ Court should have granted liberty to the State to proceed in accordance with law and as liberty has not been granted, the order should be clarified.

We are of the considered view that this is not required. Merely because in various cases liberties are granted, that does not mean that in each and every case liberty should be granted. It is a well settled principle of law that even after passing of the order, right remains available to the employer to proceed with the enquiry in accordance with law. If permissible even when liberty is not granted, it is for the employer to take action in accordance with law and, therefore, in each and every case liberty need not be granted. It is for



the department to analyze the judgment in the backdrop of the law and facts and proceed to take action. If the law permits the government to take action, they may proceed in accordance with law. Finding no ground to contest merely because liberty has not been granted by the Writ Court as the department has to exercise its administrative decision judiciously in accordance with law and take a decision in the matter, based on the grounds as canvassed by the learned counsel, we find no case to clarify the matter or grant liberty. It is left open to the department to proceed in accordance law with regard to the issue in question.

No case is made out for invoking appellate jurisdiction under Clause 10 of the Letters Patent.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Dilip, AR

AFR/NAFR	NAFR
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