

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20501 of 2013

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1. Shashi Kant Ram S/O Late Tej Narayan Ram Resident Of Village + P.O. Balbadda, P.S. Balbadda, District - Godda (Jharkhand), Presently Posted As Block Supply Officer, At Karakat Block, District - Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar, Through Divisional Commissioner, Bhagalpur Division, Bhagalpur
2. Deputy Director, Food - Cum - Monitoring Officer, Bhagalpur Division, Bhagalpur
3. The Joint Secretary To The Govt. Of Bihar Food And Consumer Protection Department, Patna
4. Joint Secretary - Cum - Chief Vigilance Officer, Road Construction Department, Bihar, Patna
5. District Magistrate, Bhagalpur
6. District Supply Officer, Bhagalpur
7. Sub - Divisional Officer, Bhagalpur
8. I.T. Manager, Food & Consumer Protection Department, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Chandra Shekhar Anand
For the State	:	Mr. AC to SC 22
For Vigilance	:	Mr. Ramakant Sharma, Sr. Advocate Law Officer Vigilance. Mr. Kedar Singhm AC to Mr. Ramakant Sharma.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-12-2017

Heard learned counsel for the petitioner and learned counsel for the State as well as Vigilance.

In the present writ petition, petitioner is challenging the order dated 25.3.2013 passed by the Joint Secretary, Government of Bihar by which his suspension has been revoked awarding the punishment of stoppage of two increments with cumulative effect.



The petitioner was working as Block Supply Officer posted at Sultanganj, He was proceeded with vigilance case, there allegation was made of illegal demand of money which led to initiation of a departmental proceeding. The Joint Secretary, Government of Bihar conducted the enquiry who submitted the report dated 2.2.2012. On the basis of that report proper enquiry was conducted, the Enquiry Officer submitted the report dated 28th September, 2012 and did not find any of the charges proved against the petitioner which reflects in following lines:

“यह आरोप जन वितरण प्रणाली के विक्रताओं के विरुद्ध है। आरोपी पर यह आरोप प्रमाणित नहीं होता है।”

Further it has been mentioned in the last portion as follows:-

“श्री शशिकांत राम, प्रखण्ड आपूर्ति पदाधिकारी द्वारा विक्रेताओं के विरुद्ध समर्पित प्रतिवेदन पर अनुमण्डल पदाधिकारी को तत्काल जन वितरण प्रणाली के विक्रताओं के विरुद्ध आवश्यक कार्रवाई करनी चाहिए थी, किन्तु उनके द्वारा ऐसा नहीं किये जाने के कारण ही प्रखण्ड आपूर्ति पदाधिकारी के विरुद्ध सीधे इस प्रकार का आरोप लगाया गया है।

अतएव श्री राम पर यह आरोप प्रमाणित नहीं होता है।”

On receipt of the report he was asked to give his explanation within 15 days which the petitioner filed. The Joint Secretary, Government of Bihar, Bihar Food and Consumer Protection Department, Patna has awarded punishment of



stoppage of two increments with cumulative effect, and was released from suspension but would not get further arrear of salary save and except what has already paid as subsistence allowances and period of suspension will be taken into consideration for pension.

Learned counsel for the petitioner submits that enquiry report is in his favour and no disagreement has been shown, after obtaining the explanation punishment has been inflicted upon the petitioner, on the basis of the report by the Vigilance Department, is completely not sustainable, as the disciplinary authority has to take decision on the basis of the material which were placed during enquiring proceeding not de hors to the material of the enquiry proceeding. He has further submitted that when the Enquiry Officer has submitted the report in his favour in that circumstances the disciplinary authority was required to record a separate finding of disagreement, would obtain comment after due consideration, could have passed the order against the petitioner. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of Punjab National Bank and others v. Sh. Kunj Bihari Misra, reported in (1998)7 SCC 84 and in such view of the matter the order is bad.

Learned counsel for the State has tried to justify the procedure which has been adopted by the disciplinary authority.



He has further submitted that petitioner was given proper opportunity and only after receipt of the enquiry report and materials collected is basis of passing the order of punishment against the petitioner.

Having considered the rival contentions of the parties when the enquiry report is in favour of delinquent, in such circumstances, as per the judgment of Kunj Bihari (supra) the disciplinary authority has to record a separate finding of disagreement, obtain the comment, after considering the material produced the enquiry as well as comment submitted by delinquent, would pass an order in accordance with law. As this procedure has not been followed in the presence case the order of punishment dated 25.3.2013 is quashed and the matter is remanded back to the authority concerned. He may proceed in accordance with law.

With the aforesaid observation and direction this writ petition is allowed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.1.2018
Transmission Date	NA

