

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13866 of 2010

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1. Shiv Shankar Ram S/O Late Rameshwar Ram R/O Village/Mohalla- Kita, P.O.- Lota, P.S.- Silli, Distt.- Ranchi
 2. Narbadeshwar Sharma S/O Sri Sidheshwar Sharma R/O Vill.- Datiyana, P.S.- Bikram, Distt.- Patna
 3. Rameshwar Thakur S/O Late Brighurasan Thakur R/O Village/Mohalla- Majwalia, P.O.- Dharara, P.S.- Kateya, Distt.- Gopalganj
 4. Shiv Shankar Prasad S/O Late Ramashish Prasad R/O Vill./Mohalla- Chitauli, P.O.- Chitauli, P.S.- Siwan, Distt.- Siwan
 5. Tribhuwan Prasad S/O Late Ram Nath Prasad R/O Vill.- Sadikpur, P.S.- Goriya Kothi, Distt.- Siwan

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Water Resources Department, Government Of Bihar, Patna
3. The Director, Land Acquisition And Rehabilitation Water Resources (Irrigation) Department, Patna
4. The Special Land Acquisition Officer-Cum-Conducting Officer Sone Project, Rohtas At Sasaram
5. The Special Land Acquisition Officer, Gandak Project, Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary Mr. Anil Kumar Tiwary Mr. A. Ankit
For the State	:	Mr. Arun Kumar Bhagat, Ac to AAg 12

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-04-2018

Heard learned counsel for the petitioners and learned counsel for the State.

In the present case, a common order has been passed against all the petitioners and identical punishment has been inflicted. Three punishments have been awarded, first stoppage of their promotion for entire life, second stoppage of three annual increments with non-cumulative effect and stoppage of payment for the period they have remained absent un-authorizedly in



Chapra Office.

The facts of the case is that all the petitioners were employees of Special Land Acquisition Office, Chapra. The petitioners were deputed to the office of the District Magistrate, Muzaffarpur, they joined and started discharging their duties. For Assembly Election, 2005 the Special Land Acquisition Officer, Chapra wrote a letter to the Incharge Deputy Collector, Muzaffarpur requested to release the petitioners for election work. They were relieved and accordingly they were allotted the place for conducting the election which they have done perfectly and efficiently, whereafter the petitioners were relieved on 10.12.2005 with a direction to join the office of the District Magistrate, Muzaffarpur.

Federation of the Employees Union had brought the fact to the notice of the Government of Bihar that employees have been sent to deputation but they have not been paid their salary for last three months and in pursuance thereof the Director, Land Acquisition and Rehabilitation, Bihar, Patna wrote a letter to the Special Land Acquisition Officer, with respect to Gopalganj Collectariat as they have not been paid salary for three months nor they have been paid advance, they are in bad financial condition till the release of payment, request was made to stay the transfer. The petitioners under wrong impression gathered that this order would be applicable to them also, no sooner



received salary, within few days they joined at Muzaffarpur on 10.2.2006.

After their joining, a show cause was served upon the petitioners, to file explanation for delay joining at Muzaffarpur, explanation must be submitted within three days, petitioners filed their explanation (Annexure-3) they took plea that due to financial constraint and request for stay of transfer order by the Federation, under wrong impression did not joint, but after receipt of salary in November, 2005, just thereafter petitioners joined the post and requested to accept the explanation but it did not cut much ice and Director, Land Acquisition and Rehabilitation, Bihar, Patna decided to initiate a departmental proceeding and vide memo no.2675 dated 15.4.2008 (Annexure-4) informed all the petitioners about the conduct of departmental proceeding in which Sri Ashok Kumar Jha was made as Presenting Officer and Special Land Acquisition Officer was appointed as Enquiry Officer. After its decision a formal charge sheet was served upon the petitioners. The petitioners have participated in the enquiry. There were three charges, first charge is that the Director Land Acquisition and Rehabilitation vide order no.1245 dated 3.5.2005 sent them on deputation at Collectorate, Muzaffarpur. After closer of Vidhan Sabha Election, 2005, Special Land Acquisition Officer, Chapra vide letter no.699 dated 10.12.2005 relieved them to join at



Muzaffarpur, but failed to join it is completely a violation for not joining the post within reasonable time. Second charge they marked their attendance in the attendance register over the statement recorded for deputation, third charge, that petitioners in their explanation had wrongly pleaded that their deputation was stayed, as the letter no. 469 dated 15.12.2005 was applicable to the employees of Gopalganj. Accordingly, enquiry was conducted, the Enquiry Officer submitted its report recorded finding that petitioners joined at deputed post at Muzaffarpur after the delay of 59 days, in the report, defence of petitioners, call made by Maha Sangh to stay the deputation till date the payment of salary as none payment had substantially eroded financial capability requested for stay of their deputation whereafter the letter was issued for stay of deputation, held that letter was applicable to employees of Gopalganj only not to the petitioners, Enquiry Officer found delay of 59 days in joining as the letter which was taken as defence has been held not applicable to them the Enquiry Officer found all the three charges proved whereafter the petitioners were served show cause attaching the copy of enquiry report filed their explanation, was not found satisfactory led to issuance of order of punishment dated 20.7.2009 (Annexure-9). Appeal filed by the petitioners has been rejected vide order dated 15.1.2010 (Annexure-10) refused to interfere with the order of punishment.



Three points have been raised by the petitioners that in the show cause dated 24.3.2008 (Annexure-7) itself Disciplinary Authority communicated to have decided to pass the order of three punishments, nothing left for them to file explanation in the event of predetermined mind to inflict punishment made in the show cause indicates the final decision of Disciplinary Authority, vitiates entire proceeding.

Learned counsel for the petitioner submits that when they have already decided to inflict the aforesaid three punishments then at later stage it was mere a formality and cannot be said to be in conformity with due procedure of law and in accordance with natural justice and in support of his submission he has placed reliance on the judgment in the case of *The State of Bihar & others v. Horil Sahni* reported in 2009(3) PLJR 988, para 5, *Oryx Fisheries Private Limited v. Union of India and others*, reported in (2010) 13 SCC 427, paragraph 13. Further it has been submitted in the event of common proceeding it could have been initiated in terms of Rule 22 of the Bihar Government Servant (Classification, Control & Appeal) Rule, 2005 but action has not been taken in conformity of the said Rule. Further plea has been taken that punishment inflicted upon the petitioners is much higher side then what could have been inflicted. Third point has been raised that punishment for stoppage of promotion for life long is completely disproportionate and shocking to the



conscience of normal person requires interference.

Learned counsel for the State has resisted the argument of the petitioners and submitted that the procedure of enquiry has properly been followed as there is no allegation, that they were not served charge sheet nor there is allegation that petitioners were not allowed to participate in the proceeding and as such it does not require interference.

Instead of deciding all points raised this Court confines its consideration to the single point of serving show-cause notice whereby communicated its final decision of disciplinary authority to inflict the punishment. In the show cause itself the punishment has been finalized mentioning therein that they have already decided to inflict the punishment which is in the nature of serving information to the employee that disciplinary authority will pass the order. The second show cause is a part of natural justice and this stage comes when the enquiry report is received and enquiry report is served upon the delinquent asking him to file his comment on the report submitted by the Enquiry Officer and delinquent will have a right to point out the defects of enquiry proceeding and perversity of finding of the Enquiry Officer. This opportunity to the delinquent is part and parcel of natural justice. If the disciplinary authority at the time of issuance of second show cause decides to inflict the punishment then nothing left for petitioner to file explanation and the disciplinary authority to



consider the explanation submitted by the delinquent but it is mere communication of order of punishment. Reliance can be placed on the judgment in the case of Oryx Fisheries Private Limited v. Union of India and others, reported in (2010)13 SCC 427 and 2018 (2) PLJR 404 paragraph 8.

From the aforesaid judgments it appears that if the disciplinary authority has communicated its decision about inflicting the punishment to the delinquent at stage of second show cause in such event purpose of serving show cause along with enquiry report itself is defeated and frustrated as loses its all efficacy. In the present case this malady has taken place by communicating punishment to the delinquent that disciplinary authority has already decided to inflict punishment, itself indicates pre-determined mind and that has been effected as punishment mentioned in the show cause, has been awarded to the petitioner and that too without considering the explanation submitted by the delinquent employee. If the explanation is submitted it is the duty of the disciplinary authority to consider the defence which has been taken by the delinquent as it is a part of natural justice as reason is living link between judgment maker and judgment. Reliance can be placed on the judgment in the case Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, reported in (2003)4 SCC 364.

In such view of the matter, this Court finds that second



show-cause itself was not in accordance with law and the same is set aside, the effect is that the punishment order is also set aside and the matter is remanded back to the disciplinary Authority from the stage of second show cause. The appellate order is also not sustainable and the same is quashed.

Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.4.1018
Transmission Date	NA

