

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14138 of 2010

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Ramanand Ray, S/O Late Raghunath Ray, Resident of Sheikhpura Goraiya Sthan,
P.S. - Airport , Distt - Patna

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Tourism,
Govt. of Bihar, Patna.
2. Principal Secretary, Department of Tourism, Govt. of Bihar, Patna.
3. Secretary, Department of Tourism, Govt. of Bihar, Patna.
4. Director, Department of Tourism, Govt. Of Bihar, Patna.
5. Deputy Director, Department Of Tourism, Govt. of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate

For the Respondent/s : Mr. Madan Mohan, A.C. to S.C.-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-04-2018

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

2. In this case, the petitioner is challenging the order of
punishment bearing memo no.168 dated 01.02.2006 (Annexure-4)
and memo no.1369 dated 05.11.2007 (Annexue-5), inflicting
stoppage of two increments with cumulative effect, which is a major
penalty as provided under Rule-14 of the Bihar Government
Servants (Classification, Control and Appeal) Rules, 2005 (for short
“Bihar CCA Rules, 2005)



3. The petitioner was appointed as Night Guard and he was posted at the head office of the Tourism Department. His duty was from 5:00 pm. to 11:00 am. and it was found that certain materials such as, old parts of Jeep such as, crack head of the Jeep, head and drum of the Jeep and a Godrej Typing Machine were missing and for that a charge-sheet was served upon the petitioner. Accordingly, the petitioner was put to departmental proceeding, the same was conducted and the inquiry report was submitted on 12.05.2005, wherein the Inquiry Officer has recorded that the management was unable to furnish the day and time when the theft of old materials of Jeep was made, submitted the report, exonerated the petitioner from the charge. Whereafter, another Inquiry Officer was deputed, who also submitted the inquiry report in favour of the petitioner and recorded that the charges were not proved against him. The Disciplinary Authority was not satisfied with the outcome, handed over the inquiry to the third person, who conducted the inquiry and found the charges proved against him and recommended for stoppage of one increment with cumulative effect, but the punishment has been awarded for stoppage of two increments with cumulative effect.

4. Learned counsel for the petitioner has raised two



grievance; first that when on two occasions the inquiry report was submitted in favour of the petitioner and the inquiry officer did not find the charges have been proved against him, in such circumstance, the Disciplinary Authority should have differed with the finding of the inquiry report and should have recorded his finding of disagreement separately and after furnishing the same to the delinquent employee, considering his explanation should have passed the order of punishment. Further submitted that when the finding was recorded by the first Inquiry Officer then the question of second inquiry was not arising, it could have been a further inquiry not the fresh inquiry as per the Bihar C.C.A. Rules, 2005 and that too without disclosing the reason why Disciplinary Authority scraped the finding of first Inquiry Officer and directed for second and third inquiry.

5. The Inquiry officer has to act as an impartial and independent arbitrator, not an agent of the Government or the employer and if the Disciplinary Authority was unable to accept the finding of the Inquiry Officer, it should have recorded the finding of disagreement furnishing the same and could have taken decision accordingly inasmuch as when the major punishment has been inflicted then it was required by the Disciplinary Authority to



conduct the inquiry in terms of Rule-17 of the Bihar C.C.A. Rules, 2005. But, in the present case, such procedure has not been followed merely cursorily Inquiry Officer recorded the finding against the petitioner. It is also very difficult to derive a finding that the petitioner was any way involved; reason is that, he was a Night Guard, discharging the duty from 5:00 pm. to 11:00 am. and the store materials were kept in the bathroom, which was not locked and used by every persons, is an admitted fact, in such circumstance, it is very difficult to find out the person involved in the commission of theft unless the direct or indirect circumstantial evidence is available.

6. In that view of the matter, the order of punishment does not survive as the respondents have not followed the procedure, not assigned the reason why Disciplinary Authority decided for second and third inquiry. It has also been brought to the notice of this Court that save and except the petitioner no one was proceeded departmentally. It appears that the management wanted some scapegoat and this petitioner was caught. Moreover, the Police has also failed to trace out the person involved in the commission of theft.

7. In such view of the matter, the order of punishment



bearing memo no.168 dated 01.02.2006 (Annexure-4) and memo no.1369 dated 05.11.2007 (Annexue-5) are quashed. If the respondent authorities still intended to proceed, they may proceed in accordance with law. Accordingly, all consequential benefit will be given to the petitioner including salary for the period of suspension. Consequently, the order depriving the petitioner from the salary during the suspension period is also quashed. It is expected that the respondent authorities will complete the entire process within three months from the date of receipt/production of a copy of this order.

8. With the aforesaid observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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