

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18138 of 2010**

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Shailendra Kumar Ojha S/O Sri Kedar Nath Ojha R/O Vill.- Paharpur, P.O.-  
Umaraganj, P.S.- Bihia, Distt.- Bhojpur, Presently R/O Mohalla- Rajbansi  
Nagar, P.S.- Shastri Nagar, Distt.- Patna, Working As Assistant In Directorate  
Of Employment And Training, Department Of Labour Resources, New  
Secretariat, Bihar, Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary
2. The Principal Secretary General Administration Department, Govt. Of Bihar,  
Patna
3. The Additional Secretary General Administration Department, Govt. Of  
Bihar, Patna
4. The Principal Secretary Department Of Labour Resources, New Secretariat,  
Govt. Of Bihar, Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Bindhyachal Singh  
For the Respondent/s : Mr.Sc6

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL JUDGMENT**

**Date : 30-08-2018**

1. The present writ petition has been filed for quashing of the order of punishment dated 15.10.2009 issued vide memo dated 21.10.2009, whereby and whereunder the petitioner has been subjected to the punishment of withholding of three annual increments with cumulative effect. The petitioner has further prayed for quashing of the appellate order dated 02.07.2010.

2. The brief facts of the case are that the petitioner was dismissed from service under the provisions of Article



311(2)(b) of the Constitution of India by an order dated 02.12.2000 on the ground of misconduct of having created an ugly scene in the Secretariat and having engaged in breaking flower bases, window panes and furniture of the Secretariat office. Thereafter, the petitioner had challenged the order dated 02.12.2000 by filing a writ petition bearing CWJC no. 2950 of 2001 on the ground that he was dismissed from service without initiating any departmental proceeding. This Court by a judgment dated 11.08.2004, had quashed the said order of punishment dated 02.12.2000 and allowed the writ petition with a direction to reinstate the petitioner with all consequential benefits, however liberty was granted to the respondents to proceed afresh in the matter. Thereafter, a departmental proceeding was initiated and enquiry was held and the Enquiry Officer had submitted his enquiry report dated 15.10.2007, finding all the charges to have not been proved. Thereafter, the disciplinary authority, without differing with the opinion and findings of the Enquiry Officer, had issued a second show cause notice dated 31.01.2008 to which the petitioner has submitted his reply and thereafter, the impugned order of punishment dated 15.10.2009 has been issued. The petitioner had then filed an appeal but the same was dismissed vide order dated



02.07.2010.

3. The learned counsel for the petitioner has submitted that for the same and similar charges, a criminal case bearing Secretariat PS case no. 672 of 2000 dated 06.11.2000 was lodged against the petitioner and others, however the same has resulted in acquittal of the petitioner and others after a full-fledged trial by a judgment dated 19.06.2002 passed by the learned Judicial Magistrate 1<sup>st</sup> class, Patna in Trial no. 754 of 2000. It is thus the submission of the learned counsel for the petitioner that since the petitioner has been acquitted in the criminal case and since the present departmental proceeding is based on identical set of facts and similar allegations, the disciplinary proceedings cannot stand in view of exoneration of the petitioner from the criminal proceedings. It is further submitted that the petitioner has been discriminated, inasmuch as other persons, against whom the criminal proceedings were initiated, have been let-off in the departmental proceeding, initiated against them. Lastly, it is submitted that the second show cause is itself perverse, inasmuch as the same does not spell out any reason for differing with the findings of the Enquiry Officer who has exonerated the petitioner from the charges, hence the order of punishment, based on the said



second show cause is perverse and is fit to be set aside, since the petitioner has not been granted any opportunity of putting forth his defence to the reasons for disagreement which might have weighed in the mind of the disciplinary authority to pass the punishment order dated 15.10.2009.

4. *Per contra*, the learned counsel for the respondents has submitted that there is no procedural irregularity in conduct of the enquiry proceeding, hence no interference is warranted by this Court in the order of punishment.

5. I have heard the learned counsel for the parties and perused the material available on record. This Court is of the view that the criminal proceedings and the disciplinary proceedings have been initiated on same and similar facts and the allegations levelled therein are also same and similar, hence once the petitioner has been acquitted in the criminal case, the disciplinary proceedings cannot stand. Reference in this regard be had to a judgment reported in **(2006) 5 SCC 446 (G.M. Tank vs. State of Gujarat)**, paragraph 30 whereof is reproduced hereinbelow :-

*“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical*



*and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather*



*oppressive to allow the findings recorded in the departmental proceedings to stand. ”*

6. The other issue raised by the learned counsel for the petitioner, regarding the second show cause notice being contrary to the well settled principles of law, is also worth consideration, inasmuch as the second show cause notice does not spell out the reasons for differing with the findings of the Enquiry Officer, who has exonerated the petitioner from the charges. Reference in this connection be had to a judgment reported in **(2013) 7 SCC 251 (S.P. Malhotra v. Punjab National Bank & ors.)** and the one reported in **AIR 1998 SC 2713 (Punjab national Bank v. Kunj Bihari Misra)**

7. Thus, this Court is of the view that on the aforesaid grounds, the order or punishment dated 15.10.2009 is perverse and has been passed without complying with the principles of natural justice, hence the same is set aside. Moreover, since the petitioner has been acquitted in the criminal case, the present disciplinary proceedings cannot stand in the eyes of law, hence the entire disciplinary proceedings are quashed.

8. Now, coming to the last issue i.e. the order dated 06.05.2011 passed by the respondents to the effect that the petitioner would be entitled only to 75% of the back wages, it



must be stated that in the earlier judgment of this Court ***dated 11.08.2004*** passed in ***CWJC no. 2950 of 2001***, this Court had specifically directed that the petitioner should be reinstated in service with all consequential benefits as a result of the quashing of the order of dismissal dated 02.12.2000, hence the respondents have acted in a contemptuous manner and in teeth of the aforesaid judgment of this Court dated 11.08.2004 by deducting 25% of back wages of the petitioner herein. Accordingly, the said order dated 06.05.2011 is also set aside and this Court expresses its displeasure over the conduct of the officials who have passed the said order dated 06.05.2011.

9. For the reasons mentioned hereinabove, the writ petition is allowed and the order of punishment dated 15.10.2009, the appellate order dated 02.07.2010 and the order dated 06.05.2011 whereby and whereunder 25% of the back wages of the petitioner has been forfeited, are quashed.

**(Mohit Kumar Shah, J)**

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