

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15544 of 2017

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Jay Prakash, son of Late Ashish Prasad, resident of village- Ujan, P.O.- Lohna Road, P.S.- Sakatpur, District- Darbhanga, at present posted as Technical Advisor to Superintending Engineer, Works Circle, Rural Works Department, Kishanganj.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.
4. Officer-on-Special Duty, Rural Works Department, Government of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Binod Kumar, Advocate
For the Respondent/s : Smt.Archana Meenakshee, GP-6
Mr. Prabhat Ranjan, A.C. to G.P.-6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 23-07-2018

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

2. In this case, the petitioner is challenging the memo no.764 dated 13.04.2017, by which the minor punishment of censure for the period 2016-17 has been inflicted upon the petitioner on the ground that he has not attended the meeting on various dates. Against the aforesaid order, the petitioner filed review, the same has also been rejected vide order dated 28.11.2017.



3. The petitioner was served a charge memo, asking explanation about the allegation attributed against him that he remained absent from monthly, District Level Committee, Disaster Management Committee and other meetings without giving any details on dates he remained absent. Whereafter, the petitioner filed his explanation and given the reasons for his absence on different meetings, making statement that he has been engaged in field work and at the same time he has gone to the Office of the Advocate General for swearing an affidavit. The explanation submitted by the petitioner was considered by the authority and punishment has been inflicted.

4. Learned counsel for the petitioner submits that the show-cause which has been served upon the petitioner is completely vague without giving the dates of his remained absent in the meeting as well as he has given his explanation of the dates he remained absent, ultimately, the order has been passed, wherein also the dates are completely silent but only mentions that the Collector made complaints of his absence on various date, but the petitioner has only given explanation regarding two dates, apart from that there is nothing on the order of punishment.



5. Learned counsel for the State submits that though the dates are not there but the record will disclose on which dates the petitioner remain absent, which can be brought to the notice of this Court. She further submits that it is the petitioner who has to give explanation mentioning dates of his absence.

6. The defect in the public order cannot be cured by filing of counter affidavit. Giving the details of absence by filing counter affidavit will not cure the lacuna which crept in the order of punishment. Reference can be placed to the decision of the Hon'ble Supreme Court rendered in the case of *Mohinder Singh Gill and Anr. vs. The Section Election Commission*, reported in *1978 A.I.R. 861*, there the Hon'ble Supreme Court has held that the illegality in the order cannot be cured by filling affidavit.

7. The impugned order suffers from illegality as the show-cause is vague as well as the order of punishment too does not disclose the dates on which the petitioner remained absent from the meeting.

8. In such view of the matter, the order of punishment of censure dated 13.04.2017 as well as the order dated 28.11.2017 passed in review application are set aside. The



authority, if so like, may take proper steps in accordance with law.

9. Accordingly, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	31.07.2018
Transmission Date	N/A.

