

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3108 of 2017

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Lalit Kumar S/o Shri Narayan Sinha R/o Mohalla - 18-B, Manglam Vihar Colony,
Ara Garden Road, Jagdeo Path, P.O. B.V. College, P.S. Rupaspur, District - Patna,
Section Officer, Civil Defence Disaster Management, Bihar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Patna.
2. The Principal Secretary, General Administration Department, Patna.
3. The Additional Secretary, Section 16, General Administration Department, Patna.
4. The Joint Secretary, Section 14, General Administration Department, Patna.
5. The Deputy Secretary, Section 14, General Administration Department, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. MD. NASHRUL HODA KHAN-SC 1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 04-04-2018

The petitioner, by way of the present writ petition, has challenged the order 5.10.2016 as well as the appellate order dated 16.1.2017 whereby and whereunder the appeal of the petitioner herein has been dismissed. It has been further prayed to direct the respondents to consider the case of the petitioner for promotion.

2. The short facts of the case are that when the petitioner was posted as Section Officer, Section 14, General Administration Department, he had forwarded the statement of facts relating to filing of supplementary counter affidavit in CWJC No. 18472 of 2008, prepared by the Law Officer of the Department and vetted by the concerned Assistant and thereafter the same was sent to the Under Secretary, who had endorsed the same to the Government Advocate for preparing and filing the supplementary affidavit. On 11.8.2015



while the aforesaid writ petition was being heard by this Court, it transpired that there was some mistake of fact in the supplementary counter affidavit filed before the Court, hence subsequently on 13.8.2015, another supplementary counter-affidavit was filed whereby and whereunder the earlier supplementary counter affidavit was withdrawn and this Court by an order dated 13.8.2015 disposed of the said writ petition bearing CWJC No. 18472 of 2008 with certain observations. In the meantime, departmental proceeding was initiated against the petitioner herein as well as the then Assistant and Under Secretary of Section 14 while the petitioner was put under suspension vide letter dated 13.8.2015. A charge memo was issued to the petitioner herein on 26.8.2015 wherein two charges were levelled i.e. one regarding the petitioner having made a mistake while providing the statement of facts for the purpose of filing the supplementary counter affidavit in the aforesaid case and the second that the petitioner had forwarded the file for approval by the higher officials, which contained wrong facts about the proceeding initiated against the writ petitioner of the aforesaid writ petition, namely, Rajdeo Sharma under Rule 139(b) of Bihar Pension Rules and his 10% pension being withheld.

3. The petitioner had participated in the departmental enquiry and the enquiry Officer submitted the enquiry report on 22.7.2016 finding the first charge to have not been fully proved. As far as the charge no.2 is concerned, it has been opined that there was



no dereliction of duty or negligence on the part of the petitioner herein and it can at best be said to be a case of partial over sight. Thereafter, a second show cause notice dated 10.8.2016 was served upon the petitioner and after the show cause reply filed, the disciplinary authority by an order dated 5.10.2016 inflicted the punishment of censure (for the year 2015-16) and stoppage of one increment without cumulative effect. The petitioner had then filed an appeal against the order of punishment dated 5.10.2016 which has been rejected by the impugned order dated 16.1.2017.

4. The learned counsel for the petitioner submits that though the enquiry officer has virtually exonerated the petitioner herein, but still the disciplinary authority has imposed the punishment dated 5.10.2015. It is further submitted that as far as the Under Secretary is concerned, who was proceeded against on the same set of charges as levelled against the petitioner herein, he has been let off lightly since the said departmental proceeding against him has been concluded with issuance of only a warning to him. It is further submitted that apart from the discrimination meted out to the petitioner herein, even otherwise, the punishment awarded to the petitioner is not proportionate to the charges levelled.

5. Per contra, the learned counsel for the respondents has submitted that the charge has been partially proved during the course of the departmental enquiry, hence minor punishment has been inflicted upon the petitioner herein. It has been further submitted that



this Court by an order dated 13.8.2015 passed in CWJC No. 18472 of 2008 has clearly observed that the proceeding against the three persons, including the petitioner herein, should be taken to their logical conclusion in the right spirit so that no impression is created that the said proceeding was initiated by way of a formality to soften the Court not to take action against the concerned officers, hence the departmental proceeding initiated against the petitioner herein and another have been taken to their logical conclusion. Lastly, it is submitted that it was also the responsibility of the petitioner to verify the contents of the statement of fact and he ought not to have merely acted as a post office.

6. I have heard the learned counsel for the parties and have gone through the materials on record. I find from the pleadings i.e. paragraph-32 of the writ petition that the stand of the petitioner is that the respondents had prepared the statement of facts, which was ratified by the petitioner and after examination by the Under Secretary, the same was ultimately sent to the Principal Secretary who had put his seal of confirmation for the purposes of sending the same to the Government Advocate for filing the supplementary counter affidavit. It is also contended in the writ petition that the petitioner herein has been single out, though the entire section was responsible for the alleged laches. Thus, in sum and substance, it is the case of the writ petitioner that though the allegation levelled against the petitioner and others are no doubt true but the fact remains that the petitioner



had limited role to play in the entire occurrence and it was the Law Officer who had to be careful for the purposes of preparation of statement of facts. Nonetheless, I find that the petitioner cannot be absolved of his duty to have verified the contents of the statement of facts and that is why the enquiry officer has partially found the charges to have been proved inasmuch as he has come to the conclusion that the present case of the petitioner can at best be said to be a case of partial over sight and cannot be said to be a case of dereliction of duty or negligence.

7. The next issue is regarding discrimination while inflicting punishment on similarly situated persons inasmuch as the Under Secretary has been let off lightly by giving him a warning whereas the petitioner has been punished by inflicting upon him a punishment of censure and withholding of increment without cumulative effect. I find that firstly the findings of the enquiry officer do not warrant such a harsh punishment as has been inflicted upon the petitioner by the impugned punishment order dated 5.10.2016, as affirmed by the appellate order dated 16.1.2017 and secondly on the ground of discrimination also, the punishment inflicted on the petitioner is fit to be set aside and the matter is required to be remanded to the disciplinary authority for reconsideration regarding quantum of punishment.

8. Having regard to the facts and circumstances of the case, I deem it fit and proper to set aside the order of punishment



dated 5.10.2016 as also the appellate order dated 16.1.2017 to the extent the disciplinary authority has inflicted punishment on the petitioner herein and direct the disciplinary authority to reconsider the quantum of punishment in the light of what has been discussed herein above in the present petition. It is further directed that after the disciplinary authority passes a final order in terms of the present order, the case of the petitioner be considered for grant of promotion on its own merit.

9. The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	28.03.2018
Uploading Date	04-04-2018
Transmission Date	

