

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17641 of 2015

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Sultan Ahmed Son of Late Md. Akhtar Resident of Mohalla - New Azimabad
Colony, P.S. Sultanganj, District – Patna Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna
 3. The Additional Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna
 4. The Under Secretary, Department of Revenue and Land Reforms, Government
of Bihar, Patna
 5. The District Magistrate, Gaya
 6. The District Magistrate, Nalanda at Biharsharif
 7. The Conducting Officer, Gaya
 8. The Presenting Officer, Gaya
 9. The Settlement officer, Nalanda at Biharsharif Respondents
- =====

Appearance :

For the Petitioner : Mr. Rajeev Kr. Verma, Senior Advocate
and Mr. Shailesh Kumar, Advocate

For the Respondents : Mr. Nadeem Seraj, GP 5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 10-01-2018

Heard senior counsel for the petitioner and the respondent
State.

2. The writ petition has been filed for quashing of
punishment of dismissal inflicted upon the petitioner which is dated
9.5.2014 and also order dated 11.8.2015, passed on the petitioner's
review petition bearing S. R. Case No.6 of 2014-15 in terms of Rule
24 (2) of the Bihar CCA Rules, 2005.

3. It is pointed out by the counsel for the petitioner that a
copy of the second show cause dated 12.3.2014 was never served on
the petitioner and therefore he has been denied his vital opportunity
of submitting his second show cause reply before the disciplinary
authority after submission of the enquiry report.

4. The respondents have denied the aforesaid position by



referring to paragraph 23 of the counter affidavit. The specific stand has been taken by them that the after detailed consideration of enquiry report and proved charges, the second show cause notice was issued to the petitioner vide letter no. 113 dated 12.3.2014 under Rules, 18 of the Bihar Government Servant CCA Rules, 2005. In the next paragraph, they submit that after issuance of second show cause notice the petitioner did not reply the same, thus he accepted the charge levelled against him.

5. Mere issuance of the notice, as pleaded by the respondents, cannot be taken to be a proof of service of the notice of second show cause upon the petitioner. This issue has been raised by the petitioner also before the Review authority in SR Case No. 6 of 2014-15, which is evident from order of the Review authority, which is Annexure 16 of the writ petition who also relied upon mere issuance of the second show cause which is apparent from paragraph 8 of the order passed by the review authority. The review authority has also relied upon some status report which shows the second show cause to be delivered/received. From the proceedings before the review authority, it is quite apparent that the findings regarding service of second show cause notice upon the petitioner has not been arrived at with reference to any material or evidence showing receipt of the same by the petitioner. Even the alleged status report has not been produced. In absence of any such proof, it cannot be presumed that the petitioner was in receipt of the second show cause merely because the same status had been projected before the authority that the same was received. No evidence showing actual service has been produced in the proceedings or before the review authority. Thus, the irresistible conclusion is that the second show cause notice dated 12.3.2014 has not been served on the petitioner.



6. In view of the aforesaid circumstances, this Court is of the view that the petitioner has been denied a vital opportunity to respond to the second show cause notice issued by the disciplinary authority. The order dated 09.05.2014, passed by the Disciplinary authority is thus violative of the principals of natural justice as also in violation of the procedure prescribed under the Bihar CCA Rules. The same is hereby quashed.

7. The petitioner, therefore, has to be reinstated will all consequential benefits. The matter is remanded to the disciplinary authority to consider petitioner’s reply on the second show cause to be filed by him within a period of four weeks. The disciplinary authority would be obliged to take a final decision on the reply of the petitioner within eight weeks thereafter.

8. The writ petition is accordingly allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
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