

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17115 of 2014

Arbind Kumar Khan Son of Sri Fani Bhushan Khan Resident of Village and
Police Station Bangaon, District - Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Registration, Excise and Prohibition Department,
Government of Bihar, Patna
3. The Deputy Secretary, Registration, Excise and Prohibition Department,
Government of Bihar, Patna
4. The Inspector General (Registration), Registration, Excise and Prohibition
Department, Government of Bihar, Patna
5. The Collector cum District Magistrate, Begusarai
6. The Inspector of Registration Offices, Munger Division, Munger
7. The District Sub Registrar, Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Adv.
For the Respondent/s : Mr. H. S. Roy, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-12-2018

Heard learned counsel for the petitioner and counsel
appearing on behalf of the State.

The petitioner is challenging the order of punishment order No.440 dated 22.01.2013 whereby and whereunder he has been awarded two punishment first reduction of his pay at the initial stage as well as stoppage of increment for five years and the present order will start operating after punishment awarded to the petitioner vide memo No.2338 dated 11.08.2010 ceased to operate as counsel for the petitioner submits that it has already been quashed by this Court.



A departmental proceeding was initiated against the petitioner with a three charges, Enquiry Officer has recorded findings against the petitioner and ultimately this order of punishment has been passed. Enquiry officer has found first charge as partially proved, second charge proved and third charge partially proved. And on that basis, the punishment order has been passed. The counsel for the petitioner has submitted that he was holding the post of Sub Registrar, Teghra (Begusarai) and as such his disciplinary authority is the State Government and the present order has been passed by Deputy Secretary, Govt. of Bihar.

Another point has been raised that after submission of report by the Enquiry Officer the disciplinary authority was obliged to give the second show cause along with enquiry report asking the explanation with regard to the finding recorded by the Enquiry Officer and only thereafter could have inflicted the punishment. This fact has specifically been stated in para 25 of the writ application that the aforesaid procedure was not followed.

The State has filed the counter affidavit with vague reply has not denied the assertion made in para 25 of the writ application. As per the judgment reported in **1991 SCC 588 (Union Of India and Ors vs Mohd. Ramzan Khan)** and the case of **Managing Director Ecil Hyderabad vs B. Karunakar deliverd**



on 1 October, 1993. In both the cases, it has been held that if the Disciplinary Authority is the Enquiry Officer, in such circumstances, there is no need of serve the copy of the enquiry report but in the event, the Enquiry Officer is different to the disciplinary authority, in such circumstances, the disciplinary authority will serve the copy of the enquiry report and will seek his comment on the report of the enquiry officer and after due consideration, the disciplinary authority will pass an order but this process has not been followed by the disciplinary authority in the present case which has been held to be part of the natural justice as well as Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 prescribed same procedure to be followed in the departmental proceeding.

In such view of the matter, the order of punishment does not stand and the same is quashed as the petitioner has obtained the enquiry report through RTI, it is presumed that he knows the contents of the enquiry report is the part of writ application. In such view of the matter, the petitioner would file his comment on the finding of Enquiry Officer and the disciplinary authority will consider his findings and take a decision in accordance with law.

However, the petitioner in course of argument submitted that the only mistake he has committed that he has pointed out that



the generator which was supplied was not up to the mark always requested for replacement. Ultimately the same was substituted with the new one as the old generator was not operating properly, the same cannot constitute misconduct in the eyes of law. These are the question facts would be looked into the by the disciplinary authority as to whether the departmental proceeding initiated against him is actuated by *mala fide* or it has been taken as a part of administrative decision against the petitioner. This Court is not given any opinion on the merit of the case but this Court direct the petitioner to file his comment within a period of two weeks to Disciplinary Authority and on receipt of the comments from the petitioner, the disciplinary authority will take decision on its own merits within a further period of four weeks.

With the aforesaid observations and directions, this writ petition is disposed of.

sanjeev/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05/01/2019
Transmission Date	NA

