

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16626 of 2010

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1. Ishwari Devi Widow of late Ramdhari sah
 2. Vivek Kumar Sah
 3. Abhishek Kumar, Both Sons of late Ramdhari Sah, All are resident of Village- Balbhadra Parsa, P.O. Bhagwat Parsa, P.S. - Phulwaria, District- Gopalganj.
 4. Punam Devi Wife of Chhotelal Sah, Resident of Village- Repura, P.S. Ziradei, District- Siwan.
 5. Mintu Devi Wife of Bipin Prasad, Resident of Village- Ganesh Sthan Maujha, P.S. Phulwaria, Distt- Gopalganj.
 6. Indu Devi wife of Kamleshwar Sah Gond, Resident of Village- Nazkatia Bazar, P.S. Unchakgaon, District- Gopalganj.
 7. Barsha Devi Wife of Akchhaylal Prasad, Resident of Villatge- Gular Baga, P.S. Phulwaria, District Gopalganj. These are the daughters of late Ramdhari Sah

.... Petitioner/s

Versus

1. The State of Bihar .
2. Collector, Gopalganj, Distt.- Gopalganj
3. Additional Collector, Gopalganj, Distt.- Gopalganj
4. Sub- Divisional Officer, Hathua, District- Gopalganj.
5. Deputy Collector Land Reforms, Hathua, District- Gopalganj.
6. Anchal Padadghikari, Hathua, Distt.- Gopalganj
7. Anchal Padadghikari, Sidhwaliya, Distt.- Gopalganj
9. Md. Khabir The Land Acquisition Officer, Gopalganj, Distt.- Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SURESH PRASAD BHAKTA

For the Respondent/s : Mr. (AAG7)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 19-06-2018

The original petitioner, namely, Ramdhari Sah, by way of the present writ petition, has prayed for quashing of the order issued under Memo No. 1779 dated 29.06.2010 by the Collector, Gopalganj, whereby and whereunder the original petitioner has been inflicted punishment of non-grant of any sort of promotion and also derived the benefits of Assured Career Progression Scheme.

The short facts of the case are that while the original petitioner was working as Halka Revenue Karmchari of Balka No.8



under Hathua Anchal of District Gopalganj, the respondent Deputy Collector, Land Reforms, Hathua sent a letter dated 2.6.2008 to the respondent Collector, Gopalganj regarding issuance of rent receipt by the petitioner in favour of a person who was not the owner of the said land in question. It was further stated in the complaint petition that on account of issuance of wrong rent receipt, there was serious apprehension of breach of peace. On the basis of the said complaint, a departmental proceeding was initiated against the original petitioner and an enquiry officer was appointed. The enquiry officer by his enquiry report dated 9.3.2010 has come to a conclusion that the petitioner was not only the person responsible for issuance of wrong rent receipts, but same was being issued since long time from a period prior to the posting of the petitioner in the said office, hence no wrong has been done by the petitioner herein. In such view of the matter, the enquiry officer had come to a finding that at best the present case can be said to be a case of negligence committed without any intention, hence it would be just and legal to inflict punishment of warning as against the original petitioner. The disciplinary authority by the impugned order dated 29.6.2010 has inflicted severe punishment of stoppage of promotion as well as has inflicted the punishment of non-grant of any sort of benefits of ACP's.

The learned counsel for the petitioner has submitted that the order of punishment has been passed without considering the enquiry report and without considering the findings of the enquiry officer as well as it is contrary to the conclusion arrived at by the enquiry officer, hence the said order of punishment is fit to be set aside. It is further submitted that the order of punishment has been passed without seeking any response from the petitioner.

Per contra, the learned counsel for the respondents has



submitted that there is no irregularity in the departmental proceeding and, therefore, this Court should not sit in appeal upon the enquiry report of punishment order pertaining to the petitioner.

I have heard the learned counsel for the parties and gone through the materials on record. It is apparent from the enquiry report that the charges have virtually been found to be not true as against the petitioner and the enquiry officer has found that the said rent receipt in question was being issued from a period prior to the posting of the petitioner and no tampering had been done by the original petitioner. The enquiry officer has further come to the conclusion that at best the present case can be said to be a case of negligence on the part of the petitioner for which the punishment of warning would be sufficient. I further find that the disciplinary authority while passing the impugned order of punishment dated 29.6.2010 has not considered the report of the enquiry officer and in fact no reasons for differing with the opinion/findings of the enquiry officer has been recorded, but still the charges have been found to have been proved as against the petitioner for the purposes of awarding severe punishment i.e. debarring the petitioner from any promotion and also debarring him from the benefits of ACP's. Moreover, the impugned order of punishment dated 29.6.2010 has been passed in violation of the principles of natural justice inasmuch as no response has been sought for from the petitioner prior to passing of the said order. In any case, if the disciplinary authority has to differ from the opinion of the enquiry officer, it is incumbent upon the disciplinary authority to seek response from the petitioner, which has not been done in the present case.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the order of punishment



dated 29.6.2010, passed by the respondent Collector, Gopalganj is set aside.

The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.07.2018
Transmission Date	

