

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11174 of 2017

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Dhananjay Kumar Rao Son of Daroga Rao, Resident of Village -Majhawalia,
Police Station-Lar, District-Deoria (U.P.), Presently Posted as Sub-Registrar,
Danapur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Departmen, of Prohibition, Excise and Registration,
Bihar, Patna
3. The Inspector General of Registrar, Department of Prohibition, Excise and
Registration, Bihar, Patna.
4. The Special Secretary, Department of Prohibition, Excise and Registration,
Bihar, Patna.
5. The Assistant Inspector General of Registrar, Department of Prohibition,
Excise and Registration, Bihar, Patna.
6. The Assistant Inspector, Department of Prohibition, Excise and Registration,
Saran Division
7. The Under Secretary, Department of Prohibition, Excise and Registration,
Bihar, Patna.
8. The I.T. Manager, Department of Prohibition, Excise and Registration, Bihar,
Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vipin Kumar Singh
For the Respondent/s : Mr. Lalit Kishore- Paag 1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 18-05-2018

The present writ petition has been filed for quashing the notice contained in notification dated 28.07.2016 issued by the Department of Excise whereby and whereunder the petitioner has been inflicted with the punishment of withholding of three annual increments with non cumulative effect.

2. The short facts of the case are that the petitioner herein was appointed as Sub-Registrar in the year 2010 and thereafter, he was working peacefully to the satisfaction of all



concerned. The petitioner, thereafter, came to know through a legal notice dated 06.11.2014 sent to him on behalf of one Ram Sakal Singh mentioning therein that a sale deed executed and registered on 24.08.2012, in favour of one Smt. Rubi Pandey is outcome of fraudulent act by forging documents in connivance of the computer operator and other staffs, hence, a request was made to conduct inquiry. The petitioner had then informed the Assistant Inspector General of Registration regarding the said incident and sought a guideline by his letter dated 10.11.2014. Thereafter, A.I.G., Registration had directed the petitioner to take action in view of the inquiry report and then the petitioner had immediately instituted an F.I.R. bearing Danapur P.S. Case No. 557 of 2014 under Sections 466, 467, 471, 379 of the Indian Penal Code as well as Section 67 of the I.T. Act against the computer operator, Shri Mukesh Raj and other concerned persons. A three members team was then constituted to conduct inquiry against the petitioner and others on the said complaint of Ram Sakal Singh. The joint inquiry report dated 01.12.2014 was submitted by the three member committee and a perusal of the same would show that the computer operator, namely, Shri Mukesh Raj @ Raj Pratik



was responsible for the fraudulent transaction. Nonetheless, the petitioner was given a notice dated 06.08.2015 and a charge-sheet dated 05.08.2015 was served on the petitioner herein on the following allegations:-

(i) Accepting fraudulent registry in violation of the registration Act and Rules.

(ii) Lack of administrative competence and responsibility.

(iii) Non compliance of Rule 12 of Bihar Registry Rule 2008.

(iv) Ignoring the income tax rule while registering documents.

(v) Making an attempt to hold the computer operator, a contractual employee, responsible, to conceal his failure in discharge of duty.

The petitioner had then submitted his response and thereafter, a departmental proceeding was initiated against the petitioner by a letter dated 16.12.2015 and the Inquiry Officer was appointed. After a detailed inquiry, the Inquiry Officer submitted an inquiry report, exonerating the petitioner from all the charges levelled against him. However, the Disciplinary Authority differing from the report of the Inquiry Officer issued a second show cause notice to the petitioner dated



04.05.2016, which was replied to by the petitioner herein and thereafter, the Disciplinary Authority passed the order of punishment dated 28.07.2016 whereby and whereunder the punishment of withholding of three annual increments with non cumulative effect has been inflicted upon the petitioner herein. The said order of punishment dated 28.07.2016 is under challenge in the present writ petition.

3. The learned counsel for the petitioner has submitted that the petitioner was the person, who had in fact initiated action and unravelled the truth as well as had filed the requisite F.I.R. pertaining to the fraud committed by the computer operator and instead of him being awarded, he has been punished. It is further submitted that the second show cause notice as also the order of punishment dated 28.07.2016 relies upon extraneous materials, not a part of the inquiry report, for the purposes of indicting the petitioner herein. It is next submitted that the Disciplinary Authority has travelled away from the charges levelled against the petitioner inasmuch as the order of punishment has been passed on the ground that since the petitioner was the superior authority of the computer operator, there was lack of supervision on the



part of the petitioner herein and the same was never a charge levelled against the petitioner. The learned counsel for the petitioner has also referred to ***Rule 18 of the Bihar Government Servant (CCA) Rules, 2005*** to submit that the second show cause notice is in violation of the said provision of law. It has further been submitted that no separate show cause has been issued to the petitioner upon the quantum of punishment awarded against the petitioner herein. The learned counsel for the petitioner has lastly relied upon a judgment ***reported in 2013 (7) SCC 251 (S.P. Malhotra Vs. Punjab National Bank and Ors)*** to contend that the Disciplinary Authority is bound to record reasons for disagreeing with the findings of the Inquiry Officer and non furnishing of the recorded reasons of disagreement from the inquiry report prejudices the delinquent and the order of punishment in such cases stands vitiated.

4. Per contra, the learned counsel for the Respondents has submitted that even the inquiry report talks about administrative laches on the part of the petitioner herein and forging of the sale deed in the office being supervised by the petitioner himself, which itself is a proof of lack of proper



supervision by the petitioner herein. It is further submitted that there is no irregularity in conduct of the departmental proceeding, hence, the same is not required to be interfered with by this Hon'ble Court inasmuch as evidence cannot be re-appreciated to come to a different conclusion.

5. Having heard the learned counsel for the parties and having gone through the materials on record, I find that firstly, the second show cause issued by the Disciplinary Authority does not contain any reason for differing with the report of the Inquiry Officer whereby and whereunder the petitioner has been exonerated from all the charges, secondly, the Disciplinary Authority has taken into account extraneous materials while issuing a second show cause notice, which was admittedly not part of the inquiry report and lastly, the allegation levelled against the petitioner, in the second show cause notice regarding lack of supervision was never a part of the charge-sheet served on the petitioner herein.

6. In view of the aforesaid, the order of punishment dated 28.07.2016 cannot be sustained and is fit to be quashed on the sole ground that the second show cause notice issued to the petitioner herein does not communicate, to the petitioner



herein, any reason for disagreeing from the inquiry report submitted by the Inquiry Officer, thus, the second show cause notice dated 04.05.2016 is quashed, having caused prejudice to the petitioner herein and consequently the order of punishment dated 28.07.2016 also stands vitiated and is accordingly set aside.

7. The law in this regard is well settled by the Hon'ble Apex Court in cases reported in **1998 (7) SCC 84 (Punjab National Bank Vs. Kunj Behari Mishra)**, **1993 (4) SCC 727 (ECIL Vs. B. Karunakar)** and **2013 (7) SCC 251 (S.P. Malhotra Vs. Punjab National Bank and Ors)**.

8. For the reasons mentioned hereinabove, the present writ petition is allowed and the order of punishment dated 28.07.2016 stands quashed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	18.04.2018
Uploading Date	18.05.2018
Transmission Date	

