

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3323 of 2011

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Dinesh Pd. Singh S/O Late Ram Nandan Singh R/O Village - Dhaknia, P.S. - Chandi, Distt. - Nalanda At present posted as Karmchhari, Circle Office Bind, P.S. - Bind, Distt. - Nalanda

.... Petitioner

Versus

1. The State of Bihar through the District Collector, Nalanda
2. The District Collector, Nalanda, Biharsharif
3. The Additional Collector, Nalanda, Biharsharif
4. The Establishment Dy. Collector, Nalanda, Biharsharif
5. The Land Reforms Dy. Collector, Hilsa Distt. - Nalanda
6. Circle Officer Bind / Islampur Distt. - Nalanda
7. Commissioner, Patna Division, Patna

.... Respondents

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Appearance:

For the Petitioner: Mr. Abhay Kumar Thakur and
Mr. Sanjay Kumar, Advocates.

For the Respondents-State: Mr. Ravi Verma, AC to GP 4.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 04-01-2018

Heard learned counsel for the petitioner as well as learned counsel for the State.

2. Petitioner is aggrieved by the order dated 08.12.2009 passed by the Appellate Authority-cum-Commissioner, Patna Division in Service Appeal No. 58/2008 by which the Commissioner was pleased to decline to interfere with the order dated 22.10.2003 passed by the Disciplinary Authority-cum-District Collector, Nalanda in Departmental Proceeding No. 8/2002-03. The order of the Appellate Authority is contained in Annexure-1 to the Writ



Application whereas the order dated 22.10.2003 passed by the Disciplinary Authority is contained in Annexure-3 to the Writ Application.

3. Learned counsel for the petitioner submits that on perusal of the charges levelled against the petitioner it would appear that there were mainly two charges against him; the first charge was that he had failed to achieve the target of collection of revenue and the second charge was that while he was placed under suspension and was sent to Islampur on 23.09.2002 for handing over the charge to the Circle Inspector Sri Mithilesh Prasad, he went on absconding and returned to the Head Office only on 05.10.2002, therefore, he had shown disobedience and insubordination.

4. Learned counsel submits that the departmental proceeding was initiated against the petitioner by calling upon him to show cause. The departmental proceeding was fixed on 14.06.2003 when the petitioner appeared in the departmental proceeding and was handed over the charges in Prapatra 'Ka'. He was given time till 22.06.2003 to submit his reply. On 22.06.2003, the petitioner could not appear in the departmental proceeding, however, the Enquiry Officer acted in haste and fixed the record for passing of order on 15.07.2003. On 15.07.2003, the Enquiry Officer passed an order holding the charges against the petitioner proved. The only reason



given for holding the charges proved is that the petitioner failed to file his show cause. Thereafter, the Disciplinary Authority passed the impugned order as contained in Annexure-3 on 22.10.2003. Learned counsel though argues that even a copy of the enquiry report was not served upon him but this fact has not been specifically pleaded in the Writ Application. The Disciplinary Authority vide order dated 22.10.2003 (Annexure-3 to the Writ Application) imposed the major punishment of withholding of two annual increments of the petitioner with cumulative effect and further that the petitioner shall not paid anything more than the subsistence allowance for the period of suspension.

5. Learned counsel submits that the petitioner, under some wrong advice, filed a review application before the Collector which was rejected on 14.01.2008, thereafter, the Service Appeal No. 58/2008 was preferred before the Divisional Commissioner, Patna. Submission is that the Divisional Commissioner, Patna rejected the appeal on the ground of limitation alone, without going into the merit of the case. Learned counsel submits that the Divisional Commissioner, being the Appellate Authority, should have at least given him an opportunity to address his case on merit because it is his contention that the entire disciplinary proceeding in the present case has been concluded in hot haste, even the principles of nature justice



have not been complied with. The Enquiry Officer has apparently submitted the enquiry report without affording a reasonable opportunity of hearing to the petitioner.

6. On the other hand, learned counsel for the State submits that the petitioner did not challenge the order of punishment for a considerable period of four years and, therefore, the remedy of appeal had become barred by limitation.

7. Having heard learned counsel for the parties and upon perusal of the records, I am of the considered opinion that the Appellate Authority-cum-Divisional Commissioner, Patna was not justified in rejecting the Service Appeal on the ground of limitation. While it is true that initially a review was filed after a period of about four years but, at the same time, it is also found that the petitioner is pleading violation of the principles of natural justice and if the contention of the petitioner is found correct, the impugned order passed by the Disciplinary Authority will be wholly without jurisdiction and bad in law, therefore, in these kinds of cases, one opportunity of appeal and consideration thereof on merit was required to be given by the Appellate Authority-cum-Divisional Commissioner, Patna, which he has not given. Thus, expressing no view on the merit of the case, I set aside the order dated 08.12.2009 passed in Service Appeal No. 58/2008 by the Appellate Authority-



cum-Divisional Commissioner, Patna and remit the matter back to the Appellate Authority for consideration of the appeal on its own merit after giving opportunity of hearing to the parties concerned. The appeal shall be disposed of within a period of six months from the date of receipt / production of a copy of this order.

8. The Writ Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.01.2018
Transmission Date	N/A

