IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16466 of 2010

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Laxmi Ram S/O Late Jokhan Ram R/O Vill.+Post- Fulwaria, P.S.- Sonabe, Distt.- Saran

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Social Welfare Department, Bihar, Patna
3. The Deputy Director, Welfare Saran Division, Chapra
4. The District Welfare Officer, Chapra, Saran
5. The District Magistrate, Saran At Chapra
6. The District Programme Officer, Saran At Chapra
7. The Child Development Project Officer, Taraiya, Saran

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash, Adv.
Mr. Dhaneshwar Pd.Gupta, Adv.

For the Respondent/s : Mr. Ravish Chandra, A.C. to S.C.-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date : 06-11-2018

Heard Mr. Gyan Prakash, learned counsel for the petitioner and Mr. Ravish Chandra, A.C. to S.C.6.

The petitioner is aggrieved by the order bearing Memo No. 95 dated 31.12.2009 whereby in exercise of power vested in the disciplinary authority under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, a penalty of stoppage of two annual increments have been imposed on the petitioner for the charges set up against him. A copy of the order of penalty is impugned at Annexure 1 to the writ petition and the charge memo is enclosed at Annexure- 15, which charges the petitioner on four counts namely;

(a) Unauthorized absence for the period mentioned thereunder.

(b) Not handing over charge to the Statistical Assistant, Chandra Bhushan Singh.

(c) Failure to comply with the directions in the matter of disposal of official business more particularly those relating to finances.

(d) Misplacement of documents/ registers mentioned thereunder.

The petitioner failed to respond and which led to paper publication. Subsequently, the charge memo was also handed over to the petitioner. A reply is placed at Annexure16 which simply demands documents from the disciplinary authority even when the nature of charges require the petitioner to support his stand with aid of documents.

In my opinion, no document can be supplied for a charge of unauthorized absence rather the onus is on the part of a charged employee to vindicate his stand that his absence was not unauthorized.

In so far as the charge of not handing over the charge to the Statistical Assistant is concerned, again the onus lay on the petitioner to vindicate his stand.

The allegations of financial irregularities also has to be rebutted by the charged employee and thus the onus was on the petitioner to establish that there was no financial irregularities.

In so far as the case of missing documents is concerned, again it was for the petitioner to convince the disciplinary authority that these documents were not missing from his custody.

The reply no where indicates thus, rather an evasive stand is taken by the petitioner. It is even more surprising that despite the circumstances noted, the Enquiry Officer chose to exonerate the petitioner of the allegations simply because the Presenting Officer did not support the charge with evidence. Somewhere down the lane the Enquiry Officer has failed to discharge the obligation cast upon him under 'the Rules' for where the charges are resting on allegations which requires the delinquent to support his stand and come clear with the charges, it was the failure of the petitioner to establish his innocence.

In my opinion the allegations were rather serious and the report of the Enquiry Officer is perfunctory. In such circumstances, appropriately and in normal course, the disciplinary authority should have remitted the matter to the Enquiry Officer for giving his opinion afresh on the basis of material on record especially where the petitioner did not choose to contest the allegation.

While Mr. Gyan Prakash Counsel for the petitioner informs that the pending subsistence allowance has since been paid, Mr. Ravish Chandra stands up to submit that the penalty has taken its effect and the petitioner has superannuated in his normal course with no financial loss in the calculation and payment of superannuation benefits.

By that as it may, that the petitioner was let of with the minutest of the penalty which merely stops his two annual increments that also without cumulative effect coupled with the fact that the petitioner has superannuated from service on 28.02.2011, even though this Court was persuaded to take a different stand considering the nature of allegations but taking note of the superannuation of the petitioner, I am persuaded to put a quietus to the matter by disposing of the writ petition which is accordingly disposed of.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.12.2018
Transmission Date	NA