

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25489 of 2013

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1. Chandrahas Verma S/O Shri Hardeo Lal Das R/O Village - Paruhar, P.S. Nauhatta, District - Sharsa

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Supaul
3. The Deputy Development Commissioner, Supaul
4. The Additional Collector - Cum - Conducting Officer, Supaul
5. The Deputy Collector (Establishment), Supaul
6. The Sub - Divisional Officer, Birpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate
For the Respondent/s : Mr. Madan Pd. Yadav, GP 23
Mr. Arvind Kumar, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 09-08-2018

Heard learned counsel for the petitioner and the respondent State.

2. The petitioner is aggrieved by order dated 25.11.2013 bearing memo no. 1627-2 passed by the District Magistrate, Supaul whereby the earlier punishment of stoppage of two annual increments without cumulative effect and disentitlement of the petitioner to salary for the period of suspension has been reiterated.

3. Earlier the petitioner had approached this Court by filing C.W.J.C. No. 2634 of 2012. The petitioner was aggrieved by imposition of the same punishment by the Disciplinary Authority, even though the Enquiry Officer has exonerated the petitioner from two out of three charges. In respect of charge no. 1 also the Enquiry



Officer was of the opinion that since the matter was pending in the criminal trial arising out of the Vigilance case, it was not appropriate to proceed in respect of the same.

4. This Court under order dated 05.03.2012 passed in CWJC No. 2634 of 2012 had set aside the order passed by the Disciplinary Authority as being non-speaking and cryptic order and remanded the same to proceed afresh from the stage of submission of the enquiry report.

5. Counsel for the petitioner submits that even after remand, the authorities have proceeded with total disregard to procedural fairness. He submits that in stead of giving an opportunity to the petitioner, the Disciplinary Authority has straight away proceeded to issue a second show cause without assigning any reasons for differing with the findings of the Enquiry Officer. He submits that such action was contrary to the procedure prescribed for conduct of the proceedings and in contravention of the established law which mandates that if the Disciplinary Authority is to differ with the findings of the Enquiry Officer, he should indicate the point of difference by assigning reasons with reference to some evidence on record so as to afford the delinquent an opportunity to respond to the same. Law in this regard is well settled. This Court would only refer to the judgment in the case of **Punjab National Bank & Others vs. Kunj Behari Mishra** reported in (1998) 7 SCC 84. The illegality



does not stop here. Pursuant to the said second show cause, the petitioner has responded by giving all the details of his defence. The same has been submitted on 21.09.2009. The petitioner has placed on record the various documentary evidences to show that the amount of Rs. 11,600/- which was recovered from the office Almirah was the voluntary contribution of the persons for repair and renovation of the temple within the premises of the office. The same was supported by receipts showing voluntary contribution for the said purpose. Even in the charge memo there is no allegation that the said amount has been paid by someone for any illegal gain or for some illegal purpose. Mere recovery of the said amount from almirah *per se* has been made a charge which the petitioner has tried to explain by giving his detailed reply to the second show cause on 21.09.2009 along with the documentary evidence.

6. Once again the petitioner has been inflicted with the same punishment which earlier was set aside on the ground of total non-application of mind and on the ground that the punishment has been issued without taking into consideration the petitioner's case and without assigning any reasons. This time also this Court would find that while imposing/reiterating the punishment of withholding of two annual increments and for denying the petitioner the salary during the period of suspension, no reasons have been assigned in the order passed by the Disciplinary Authority.



7. On going through the entire order passed by the Disciplinary Authority dated 25.11.2013 bearing memo no. 1627, this Court finds that the letter dated 21.09.2009 whereby the petitioner has submitted his response to the second show cause, has not at all been considered. Even counsel for respondent State is not in a position to point out that the said response of the petitioner dated 21.09.2009 has been considered or even taken note in the order of the Disciplinary Authority. It is only submitted that vigilance case is pending.

8. The order passed by the Disciplinary Authority in total non-consideration of the petitioner's response is nothing but an empty formality. The authority while deciding such issue having such civil consequences should pass order in accordance with law and after assigning reasons in support of the conclusion with respect to the response of the delinquent. But the same has not been done in the instant case.

9. Such order, as issued in the instant case is a glaring example of a non-speaking order. This Court would only refer the judgment in the case of **Hassan Muzahid vs. the Bihar State Electricity Board & Ors.**, reported in **2015 (4) PLJR 435**. Under similar circumstances the exercise of jurisdiction by the Disciplinary Authority without referring to any of the issues raised by the petitioner and awarding punishment without assigning any reason in support of the conclusion, has been deprecated by the Division Bench



of this Court. The order dated 25.11.2013 issued by the District Magistrate, Supaul whereby the punishment has been awarded is therefore, clearly unsustainable in law and is quashed.

10. The writ petition is allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

