

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8015 of 2018

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Awadhesh Kumar Tiwari Son of Sri Gauri Shankar Tiwari resident of village -
Alapur, P.S. Manjhapur, District - Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Building Construction Department, Bihar, Patna.
3. The Joint Secretary, Building Construction Department, Bihar, Patna.
4. The Deputy Secretary, Building Construction Department, Bihar, Patna.
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinbandhu Singh, Adv.
For the State	:	Mr. M.K. Ambastha, SC26
		Mr. Subodh Kr., AC to SC26
For the AG	:	Mr. Rabindra Kr. Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 05-12-2018

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order dated 8.1.2018 passed by the Joint Secretary, Building Construction Department, Government of Bihar, Patna through Notification No. 206/Building/Charge (Ara) – 01/22-17-206 (Bh) Patna dated 8.1.2018 and also challenging the order contained in No. 9515 dated 7.9.2018 which has been challenged through I.A. No. 7646 of 2018 which has become part of the present writ application.

The short fact of this case is that the petitioner was holding the post of Executive Engineer and was posted at Sasaram. He was transferred from Executive Engineer, Building Construction Division, Darbhanga to Executive Engineer, Building



Division, Sasaram vide Notification dated 13.5.2008 and there was a delay of two days in joining the new place of posting that occasioned in consumption of time in handing over the charge. For that, the Collector, Sasaram issued show-cause for the delay of two days in joining the new place of posting which the petitioner replied suitably, instead of dropping the proceeding, a departmental proceeding was initiated against him by issuance of Prapatra "Ka" i.e. major penalty proceeding (Annexure-10 Series) and, thereafter, the petitioner was put to departmental proceeding. The Enquiry Officer found the charge proved whereafter the petitioner was issued second show-cause and ultimately he was inflicted with the punishment vide order no. 207 dated 8.1.2018 imposing penalty of censure for the year 2008-09 with stoppage of three increments with non-cumulative effect.

The petitioner superannuated from service on 31.3.2018, after that, a fresh order has been passed by the Joint Secretary dated 7.9.2018 (Annexure-A) modifying the earlier order which is part of the counter affidavit filed by the State on account of the fact that the order could not have been implemented against the petitioner and, as such, it has been changed from non-cumulative effect to cumulative effect and, thus, it becomes a major penalty.



Learned counsel for the petitioner submits that his Controlling Authority was the Superintending Engineer and the Collector does not have the jurisdiction to issue show-cause, he could have at best informed the Superintending Engineer for taking appropriate steps for the delay in joining the new place of posting. He has further submitted that the petitioner had joined the place of posting after handing over the charge to his successor at Darbhanga and he has explained literally as to why there was a delay of two days. More so, the subsequent order, which has been passed by the State Government, is not sustainable as it does not come in the framework of law on the fact that the petitioner has superannuated from service on 31.3.2018 and, after that, the relationship of master and servant was no longer in existence, the punishment has already been inflicted upon the petitioner and, at best, if he wanted to enhance the punishment, they could have converted the proceeding under Section 43(b) and could have passed the order accordingly, as after superannuation, the power does not lie to the authority to pass any order substantive in nature and, that too, when the order could not have been implemented on account of impending superannuation, the order cannot be allowed to modify the order of punishment with impunity. The order which has been passed is without giving notice for enhancement of the



punishment is against the principle of natural justice, completely beyond law and the order which has been passed cannot be given retrospectivity as it is against law.

In that view of the matter, the order contained in Memo No. 9515 dated 7.9.2018 is quashed. This Court directs the State to release the pensionary benefit in favour of the petitioner without delay, if not already paid.

In the result, the present writ application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.12.2018
Transmission Date	

