

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5815 of 2017

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Manoj Kumar, son of Sri S.S. Chaudhary, R/O at + P.O. - Surajgarha, District
- Lakhisarai, presently posted as Officer on Special Duty, Bihar State Staff
Selection Commission, Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Additional Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar Singh, Advocate
For the Respondent/s : Mr. Md. Irshad, A.C. to S.C.-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 01-10-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In this case, the petitioner is challenging the order containing memo no.9122 dated 28.06.2016, whereby and whereunder the punishment of censure for the year 2014-15 with stoppage of one increment with non-cumulative effect has been inflicted upon the petitioner as well as the order containing memo no.15534 dated 18.11.2016, by which the revision preferred by the petitioner against the aforesaid order has been rejected by the authority.



3. The ground of punishment is that the petitioner being an appellate authority failed to supply the information under Right to Information Act.

4. Learned counsel for the petitioner submits that an appeal for giving information under the Right to Information Act was filed on 24.08.2011, after two years, the petitioner has joined the post as S.D.O. i.e. on 18.04.2013, inasmuch as, the S.D.O. is not the appellate authority under the Right to Information Act to entertain the appeal, it is the Block Development Officer, Piro, who is the appellate authority to entertain the appeal, if any, filed, hence, the action of punishment is not sustainable under the law.

5. Learned counsel for the State submits that in the proceeding the petitioner has not denied that he was not the appellate authority, rather he has accepted that he was the appellate authority, now he cannot be allowed to turn round and make submission that at the relevant time he was not the appellate authority under the Right to Information Act.

6. The original authority and the appellate authority are notified by the Government for different departments, which is annexed as Annexure-3 to this writ petition, wherein it shows



that in the case of Piro block the Block Development Officer, is the appellate authority.

7. Learned counsel for the State is not in a position to deny the statement made by the petitioner.

8. If the petitioner was not the appellate authority, in such circumstance, he cannot be visited with any punishment on account of fact that he has failed to provide information under the Right to Information Act. The petitioner cannot be inflicted any such punishment for the act which is not being authorized to carry out by him as under the Right to Information Act, only the authorized persons will be liable to supply the information, inasmuch as, the appeal was filed in the year 2011 and the petitioner has joined the post of S.D.O. after two years. A person can be punished when he has failed to discharge certain duties under the statutory provision, but the statutory provision itself stipulates that the petitioner is not the appellate authority but the other authority is the appellate authority.

9. In such view of the matter, the order of punishment containing memo no.9122 dated 28.06.2016 as well as the order containing memo no.15534 dated 18.11.2016 are set aside and it will be treated that the petitioner was not served any punishment



order on the grounds as stated herein-above.

10. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	05.10.2018
Transmission Date	N/A.

