IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12202 of 2013

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Anil Kumar son of Sri Satyanarain Rajak, resident of village-Pharah, PS-Akbarpur, District-Nawada.

... ... Petitioner/s

Versus

The State of Bihar and Ors

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s Siddhartha Prasad, Sunil Kumar, Kaustubh and Om Prakash Kumar, Advs.

For the Respondent/s : Mr. Lalit Kishore, AG
Hari Shanker Roy, AC to AG

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 06-02-2019

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

In this case, the petitioner is challenging the Memo. no.165 dated 02.09.2011 (Annexure-9) by which the Government has inflicted two minor punishments, first censure and second the petitioner will not be entitled to the five annual increment and order of review vide Memo CON/B-120/2011-102 dated 17/5/2018 (Annexure-14).

In the present case, the petitioner at the relevant time was posted at Bhabhua as Commercial Tax Officer. He had apprehended a vehicle bearing no. UP67T-1911, which was carrying the slice, but there was a violation of VAT. A seizure list was prepared by the petitioner of seized articles describing as cold drinks slice and on account of violation of VAT, the assessment was made of Rs.11025/- and as per the petitioner, the said money was already deposited. When it was known to the higher authority that irregularity has been committed in verification, a notice was given to the Assistant Commissioner, Commercial Taxes, Bhabhua addressed a letter, vide Memo no. 397 dated 19.04.2014, wherein description of the fact has been mentioned about seizure and release of the vehicle and in the said letter, it has also been mentioned that whether it was not necessary to lodge a criminal case against the vehicle owner. Thereafter, the Additional Commissioner, Commercial Taxes, vide memo No. 169 dated 22nd June 2011, addressed a letter to the present petitioner about the statement of explanation with regard to the irregularity committed in verification of the seized materials which the petitioner replied and said that certain wrong was done by him which should be condoned became a basis for awarding the punishment to the present petitioner which is under challenge.

The learned counsel for the petitioner submits, it is a fact, slice which has been mentioned as cold drinks slice, for that, only 5% VAT was charged which has been deposited and the State has not received any loss in any manner, has placed reliance on the information served under Right to Information Act on 26th December 2017 wherein the issue of raising charge of 5% VAT against the slice drinks wherein it has been said that the charge made by the petitioner was at the rate of 0.5% correct and rightly the assessment has been made as well as there is no loss to the State and further submits that before inflicting the punishment of minor penalty, no formal show cause was ever issued to the petitioner, violating Rule 19 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Even for the minor punishment, the proceeding in the nature provided in Rule 19 has to be followed. Admittedly, the respondent authorities have failed to follow the proper procedure and passed the order of punishment.

The learned counsel for the State has submitted that when the petitioner himself has accepted the commission of irregularity while preparing the seizure list then there was no necessity to serve him show cause and asked explanation but only was required of passing the order.

The petitioner filed the Review application has also been rejected vide Memo no. 102 dated 17/5/2018 (Annexure-14).

Having considered the rival contentions of the parties, either it is major punishment or minor punishment but that can be adjudicated as per procedure prescribed under Rule 17 and Rule 19 respectively of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and even if a person is visited with any punishment, the natural justice which is *sine qua non* is to be followed at least the person must be known the imputation made against him to be proceeded departmentally that has not been done in the present case which is required to be followed. The protection which was required to be given to the petitioner in the shape of show cause having been not followed, on the face of it, the order of punishment cannot be sustained, inasmuch as the noting of the file presented by the petitioner has not been disputed by the learned counsel for the State wherein it has been recorded that for the seized materials i.e. cold drinks slice the chargeable amount was at the rate of 05% was deposited in the exchequer of the State.

In such view of the matter, the order of punishment vide Memo no. 165 dated 2/9/2011 (Annexure-9) as well as order passed in Memo no. 102 dated 17.05.2018 (Annexure-14) is set aside and this petition is accordingly allowed.

(Shivaji Pandey, J)

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