

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10450 of 2011

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Sushil Kumar Mishra, son of Sri Narendra Kumar Mishra, at present residing in the House Yashoda Sadan, Jagjiwan Road, PS – Rampur, District – Gaya and working as Officer on Special Duty (OSD) Urban Development and Housing Department, present posted on deputation as Executive Officer, Nagar Panchayat, Bodh Gaya, District - Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Rural Development Deptt., Govt Of Bihar, Patna
3. Principal Secretary General Administrative Deptt., Govt. Of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Abhay Kr Thakur, Arvnendra Kr, Ms Sukriti Kumari, Advocates
For the Respondent/s	:	Mr Anjani Kr, AAG IV Mr Sanjiv Kr, AC to AAG IV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 15-07-2019

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

2 While the petitioner was posted as Block Development Officer, he was served with a charge memo on Prapatra Ka purporting to initiate proceedings against him. Charge memo is Annexure 1 to the writ petition. Upon detailed enquiry, the report was submitted by the Enquiry Officer which is dated 20.10.2008. The charges, which were enquired into, related to



irregularities in the award and execution of schemes under the Sampurn Gramin Rozgar Yojna.

3 Enquiry Officer, after a thorough consideration, which is contained in Annexure 3 to the writ petition, came to a finding that there may have been some deficiency in the technical supervision. However, no lapses could be found in the administrative supervision. Accordingly, he had concluded that it would not be proper to hold the petitioner responsible or guilty for the charges. The enquiry report, therefore, exonerated the petitioner.

4 Short submission made by the learned counsel for the petitioner is that the petitioner has been visited with the minor punishment of withholding of two annual increments without cumulative effect by order dated 24.03.2009 issued by the Government without any second show cause having been issued by the authorities, communicating disagreement with the findings of the Enquiry Officer.

5 Learned counsel for the State, on the basis of the charge memo, submits that having committed lapses in Sampurn Gramin Rozgar Yojna, petitioner has been allowed due opportunity and very minor punishment has been imposed on him. He, however, on the basis of record, is not in a position to show that a



second show cause notice, disagreeing with the findings of the Enquiry Officer, was served on the petitioner. On account of such a procedural lapse, the order of punishment is unsustainable in the eyes of law.

6 Once the Authorities resorted to the procedure prescribed under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, Bihar CCA Rules) by issuance of a charge memo and had subjected the petitioner to an enquiry, they were required to observe the prescribed procedure thereafter before arriving at a final conclusion having penal consequences. The magnitude of the penal consequence is irrelevant in the circumstance. From the records, it appears that without issuing any second show cause notice as required in the Bihar CCA Rules, petitioner has been visited with the order of punishment dated 24.03.2009. The order of punishment is, therefore, quashed.

7 The consequential order dated 21.08.2009 giving effect to the order of punishment, therefore, stands quashed.

8 The petitioner has also filed Review under Rule 24 (2) of the Bihar CCA Rules. The same has been rejected by Annexure 11 dated 24.03.2011 merely affirming the illegal order



of punishment. Since the order of punishment has already been quashed, the same must also collapse and the same is quashed.

9 On the basis of the enquiry report, it would be open to the Enquiry Officer to take appropriate action in accordance with law.

10 Writ petition stands disposed of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2019
Transmission Date	NA

