# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.3857 of 2016**

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Subhas Kumar S/o Late Shiv Balak Prasad R/o Nai Sadak, Chow, Patna City, P.S. Chowk, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Excise Commissioner, Vikash Bhawan, Bailey, Bihar, Patna.
3. The Superintendent of Excise, Aurangabad.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Kritu Verma

For the Respondent/s : Mr.Puachi Pallavi, AC to AG

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**

ORAL ORDER

3 02-05-2019 Heard counsel for the petitioner and counsel for the respondent-State.

Petitioner is aggrieved by punishment of withholding of one annual increment with cumulative effect under communication dated 03.02.2014 issued by Excise Commissioner, Bihar, Patna.

Short submission advanced by counsel for the petitioner is that punishment has been inflicted by alleging that due to insufficient lifting of liquor and due to the fact that the petitioner had not lodged sufficient number of cases against violators, department has suffered loss of revenue below target fixed by the department on account of negligence of his duty.

Counsel for the petitioner submits that he has specifically raised an issue before the authority that he joined in the district of Aurangabad on 18.09.2013. The allegation of revenue collection for the period April, 2013 to October, 2013 is wholly unsustainable and without basis since petitioner was not posted in the district of Aurangabad prior to September, 2013. This fact has not been considered by the respondent while passing the impugned order.

Such submission of counsel for the petitioner is, prima facie, correct. The order of punishment does not show any consideration of this aspect of the matter. On the said submission, this court would observe realising revenue less than target fixed by the department, per se can not amount of misconduct. There is no allegation that due to any dishonest reason petitioner has realised revenue less than what was fixed by the department. In the circumstance show cause dated 25.10.2013 does not disclose any misconduct or misbehaviour as contemplated under Rule 17(3) & (4) of the Bihar CCA Rules, 2005. Unless charge memo discloses statement of imputation of misconduct or misbehaviour petitioner cannot be subjected to an enquiry under the CCA Rules,2005. Since the charge memo itself does not disclose any misconduct and there was no basis to proceed against the petitioner, entire proceedings thereafter stand vitiated.

The order of punishment dated 03.02.2014 is, therefore, unsustainable on the aforesaid ground and same is quashed. Petitioner is entitled to all consequential benefits.

Writ petition is allowed.

**(Madhuresh Prasad, J)**

s.hassan/-

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