

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15384 of 2018

Arbind Kumar Khan Son of Fani Bhushan Khan, resident of village + P.S.-
Bangaon, Distt.-Saharsa, State-Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. Principal Secretary, Department of Prohibition, Excise and Registration Bihar, Patna.
3. Special Secretary, Department of Prohibition, Excise and Registration. Bihar, Patna.
4. Additional Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.
5. Inspector General (Registration), Department of Prohibition, Excise, Bihar, Patna.
6. Deputy Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajni Kant Jha, Advocate
For the Respondent/s : Mr.Vivek Prasad- GP-7

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 29-07-2019 In the present case, the petitioner is challenging Annexure-1 of this application, vide Memo no. 1257 dated 05.03.2016, whereby and whereunder, the competent authority has replaced the punishment from warning to censure and also inflicted the punishment that he will not be entitled to the salary save and except the subsistence allowance, which has been paid for the period from 15.02.2011 to 26.09.2011.

2. The petitioner was departmentally proceeded with



and ultimately the charges were found to be proved against against the petitioner. After following due procedure, the petitioner was awarded the punishment of warning, vide Memo no. 4234 dated 15.09.2015, but after Memo no. 1257 dated 4/3/16, the order of warning has been substituted by censure and also the punishment has been inflicted that he will not be entitled to salary for the period as mentioned above except the subsistence allowance.

3. The counsel for the petitioner has submitted that so far the deprivation of salary for the period from 15.02.2011 to 26.09.2011 is *per se* illegal, as this order has been passed without holding any proceeding against this petitioner, but the counsel for the State has submitted that there is no illegality in changing the punishment from warning to censure. The competent authority has passed such order, but in the present case, question would arise that there is no dispute that the authority does not have any power when already the punishment of warning has been inflicted and no reason has been assigned for converting it to censure that too without any show cause to the petitioner. The substitution of punishment without any valid reason by the competent authority itself shows the arbitrary exercise of power of the respondent.



4. In such view of the matter, this Court is of the view that Memo no. 1257 dated 05-03-2016 suffers from illegality on two counts, first that no show cause was given, nor any proceeding was conducted for deprivation of salary for the period from 15.02.2011 to 26.09.2011 which violates Rule 97 of the Bihar Service Code and before substituting the punishment show cause was not given and when already the period of warning is over, to make it effective, the order of censure has been passed.

5. This Court cannot approve the action of the respondent, accordingly the order of punishment (Annexure-1) the order dated 27.06.2018 (Annexure-2) are quashed and this petition is allowed.

(Shivaji Pandey, J)

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