

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6689 of 2017**

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Ashok Kumar Tripathi, son of Late G.N. Tripathi, Resident of 124, Subham Colony, Near Azad Chowk, P.S.- Khorabar, District- Gorakhpur (U.P). Presently posted as District Supply Officer, Arwal, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Commissioner, Magadh Division, Gaya.
6. The District Magistrate, Jehanabad.

... .. Respondent/s

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**Appearance :**

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|---------------------|-----------------------------------------------------------------------|
| For the Petitioner  | : Mr. Chitranjan Sinha, Sr. Advocate.<br>Mr. Shekhar Singh, Advocate. |
| For the Respondents | : Mr. Mrigendra Kumar, Advocate.                                      |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 07-01-2019**

Heard Mr. Chitranjan Sinha, learned senior advocate for the petitioner and Mr. Mrigendra Kumar, learned advocate for the respondents.

2. The petitioner has sought quashing of the order communicated vide resolution contained in Memo No. 15512 dated 17.11.2016 whereby he has been awarded punishment of censure for the year 2001-02 coupled with stoppage of three increments with cumulative effect, which according to the submission of the learned counsel for the petitioner is arbitrary, unreasonable and cannot be justified by the records.

3. The petitioner at the relevant time was posted as Executive Magistrate in Jehanabad Collectorate and was



handling additional charges of various other departments including the Nazarat.

4. After the transfer of the petitioner from the aforesaid post, pursuant to an annual audit it was found that there were some irregularities in maintaining the cash book and also in the temporary advance register of Panchayat Election 2001. Since the audit referred to above disclosed such irregularities, the matter was investigated by a three men committee.

5. In the report of the aforesaid committee, it was only found that the petitioner ought to have been more careful while discharging his functions as In-charge Executive Magistrate of the Nazarat. According to the petitioner, the matter ought to have ended at that but, in the year 2003, a show cause notice was issued to the petitioner which was replied by him. There was absolutely no communication to the petitioner after the reply given by him and only much later i.e. on 02.05.2006, a further show cause notice was issued to him with respect to the same irregularity having been noticed during the audit of the department. Another person by the name of Arbind Kumar Jha, who too at the relevant time was posted as Executive Magistrate was also issued show cause notice.

6. In the meantime, an FIR was registered at the instance of the District Magistrate, Jehanabad vide Jehanabad P.S. Case No. 98 of 2006 in which, though



charge sheet was submitted against the concerned Nazir but the entire gamut of investigation papers did not refer to any lapses on the part of the petitioner or others who were entrusted with the task of managing the Nazarat. As such, a final Report No. 483 of 2008 dated 31.12.2008 was submitted which was also accepted by the court.

7. Before the final report was submitted, in the year 2006, a departmental proceeding was initiated under Section 17(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 with respect to the charges against the petitioner of being reckless and not being cognizant of the affairs of the department.

8. A Departmental Enquiry Commissioner was appointed by a resolution of the Government and at that stage, the petitioner was not afforded any opportunity to submit his explanation with respect to the memo of charges. However, later, on the insistence of the petitioner, he was permitted to put in his response but since nothing came out of the aforesaid efforts of the petitioner, he was constrained to approach this court by way of a writ petition bearing C.W.J.C. No. 5213 of 2015. Because of the pendency of the writ petition referred to above, it has been argued, the enquiry was hurriedly completed as if making a ground for incorporating the same in the counter affidavit in the aforesaid writ petition.



9. Learned counsel for the petitioner has drawn the attention of this Court to the enquiry report which clearly states that the petitioner was entrusted with responsibilities under many heads and that but for the fact that he should have remained more vigilant in the maintenance of the cash register and the accounts, nothing was found which could even hint towards his making any attempts of embezzling Government fund or deliberately allowing any such irregularity to be passed off as not having been taken notice of.

10. The punishment awarded to the petitioner, it has further been argued, is not in proportion or commensurate with the findings arrived at in the enquiry report and even the enquiry report has relied upon the opinion given by the District Magistrate, Jehanabad.

11. One of the prime grounds of the petitioner in the present petition is that he had demonstrated before the authorities that the District Magistrate had been interacting exclusively with the Nazir and in fact even some of the withdrawals were directly at the instance of the District Magistrate without even referring to the notes put up by the petitioner in his capacity as In-charge, Executive Magistrate of the Nazarat. The petitioner has also tried to show to this Court from the investigation papers that every now and then, he had put up his dissent note but even when the District Magistrate had the occasion to go



through such files, no reference/notice was taken of such objections raised by the petitioner.

12. In that view of the matter, the imposition of the aforesaid punishment of censure and stoppage of three increments with cumulative effect was thoroughly unwarranted. It has also been submitted on behalf of the petitioner that for similar charges, Arbind Kumar Jha, one of the persons against whom departmental proceeding was initiated and who too was in-charge of managing the affairs of the Nazarat, has only been slapped with a punishment of censure only. While intimating this fact to this court, Mr. Sinha, learned senior advocate has only tried to canvass that there has to be some parity in the punishment, if at all the charges are similar. The ancillary ground on which the present petition has been pressed is that though a presentation officer was appointed but the tenor of the enquiry report clearly establishes that the presenting officer did not present the papers the way it should have been done.

13. On these grounds, learned counsel for the petitioner has sought quashing of the resolution/order contained in Memo No. 15512 dated 17.11.2016, by which he has been inflicted with the punishment of censure and stoppage of three increments with cumulative effect.

14. For the aforesaid facts, this Court is convinced that the findings of the enquiry report do not



make out a case for imposition of punishment of the petitioner and that also, a major punishment with the inclusion of stoppage of three increments of the salary with cumulative effect.

15. Thus, the resolution contained in Memo No. 15512 dated 17.11.2016 under challenge is set aside.

16. The matter is remanded to the disciplinary authority for passing out a fresh order in accordance with law after taking into account the entire records of the enquiry proceeding.

17. The disciplinary authority shall pass a reasoned order within a period of three months from the date of filing a representation of the petitioner, annexing a copy of the present order within a period of four weeks from today.

18. The petition is accordingly allowed and disposed of.

**(Ashutosh Kumar, J)**

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