

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5057 of 2016

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Anil Kumar Arya, Son of Sri Rameshwar Pd.Arya, resident of village-Kaushalpur, P.S. Haveli Kharagrpur, District-Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Principal Secretary Department of Home (Special), Bihar, Patna
4. The Inspector General, Prison, Bihar Patna
5. The Additional Secretary General Administration Department, Govt. of Bihar, Patna
6. The A.I.G. Prison, Bihar, Patna
7. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna
8. The Deputy Secretary General Administration Department, Govt. of Bihar, Patna
9. The Divisional Commissioner, Darbhanga Division Darbhanga cum Inquiry Officer
10. The District Magistrate, Madhubani cum Presenting Officer
11. The Secretary, Bihar Public Service Commission, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi, Advocate Mr.Indu Bhushan, Advocate
For the State	:	Mr. Rewti Kant Raman, AC to GA 9

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 05-08-2021

Heard learned counsel for the petitioner and learned counsel for the respondents through video conference.

2. The present writ petition has been filed “for quashing order of penalties dated 21.11.2014 issued vide memo no.16040 contained in Annexure-18, issued by under the signature of respondent no.5, whereby and where under in a departmental proceeding penalties have been imposed that “Censure for the



year 2012-13 and with holding of three increments of pay with cumulative effect and also for quashing the memo no.5036 dated 1.4.2015 contained in Annexure-23, under which review application has been rejected and order of penalties issued vide memo no.16040 dated 21.11.2014 has been maintained as status quo and for quashing the memo no.2687 dated 19.02.2015 contained in Annexure-22 whereby and whereunder order has been passed by the respondent no.5 that for suspension period (i.e. from 12.12.2012 to 6.10.2014) 25% salary shall be deducted from the paid salary”.

3. The short facts according to the petitioner are that in June, 1995, he was appointed on the post of Deputy Collector and in due course he was posted as Senior Deputy Collector at Muzaffarpur. In the year 2010, he was given the charge of many departments including that of in-charge Jail Superintendent of Madhubani, when an occurrence took place and one of the prisoners escaped from Madhubani District Jail. The petitioner was not present in the jail premises at the relevant time and took serious action against the Head Warder, Gate Warder and Jailor. An FIR was registered with the local police station. Upon the petitioner informing the District Magistrate, Madhubani about the escape of an under-trial prisoner Md. Sabir, the District



Magistrate inquired into the matter and sent an inquiry report to the I.G. (Prison), Bihar, Patna, stating that the Head Warder, Gate Warder and Jailor were responsible because they had not maintained gate register and had illegally brought under-trial prisoners for painting works of the temple adjacent to the jail, in course of which Md. Sabir found an opportunity to escape. On 12.12.2012, however the petitioner was put under suspension and thereafter a departmental proceeding was initiated against the petitioner, culminating into the order of punishment dated 21.11.2014 by way of censure and stoppage of three increments of salary with cumulative effect (Annexure-18). A further order dated 19.02.2015 was passed whereby the petitioner was allowed 75% of his salary to be paid during the period of suspension (Annexure-22). An application for review against the aforesaid order did not also find favour with the authority in terms of order dated 01.04.2015 (Annexure-23).

4. Learned counsel for the petitioner assails the order of punishment on various grounds, such as violation of principles of natural justice and contravention of prescribed procedures. It is submitted that the inquiry report dated 15.04.2014 (Annexure-16) has heavily relied upon the District Magistrate's letter no.373 dated 05.03.2014 for holding that the charges were



proved/partially proved and that in view of the said letter, the explanation of the petitioner was not acceptable. It is stated that the said letter dated 05.03.2014 however, was never supplied to the petitioner, which has thus resulted in violation of principles of natural justice.

5. It is further submitted that not a single witness was examined nor documents exhibited in course of inquiry in order to prove the charges.

6. Learned counsel for the petitioner therefore submits that the inquiry report is violative of Rule 17(23)(i) of the Bihar CCA Rules, 2005, as a consequence of which the entire departmental proceeding is vitiated. He has relied on several judicial decisions of this court including CWJC No.8002 of 2016, *Girish Prasad Sah Vs. The State of Bihar and others* (Annexure-24 series), as well as CWJC No.1270 of 2005, *Amarendra Prasad Vs. Bihar State Financial Corporation and others* (pages 9 and 17 of the supplementary affidavit).

7. Learned counsel for the respondents appears and relies on the counter affidavit to oppose the writ petition. The thrust of his submission is that the petitioner at no stage raised objection that he was not supplied with the said letter dated 05.03.2014.

8. Having heard the parties and on a consideration of the



materials on record, this Court finds merit in the submissions of the petitioner. A perusal of the inquiry report dated 15.04.2014 discloses that considerable reliance has been placed on the District Magistrate's letter no. 373 dated 05.03.2014 for proving the charges against the petitioner.

9. Learned counsel for the respondents does not dispute that the said letter dated 05.03.2014 was in fact never served on the petitioner and has for the first time been brought on record by way of a supplementary counter affidavit filed before this Court. The authority has thus relied on material by way of the letter dated 05.03.2014 without confronting the petitioner in that behalf which has thus resulted in violation of natural justice. This Court is therefore of the view that the Departmental proceedings stand vitiated.

10. Accordingly, the impugned order dated 21.11.2014 (Annexure-18) along with the inquiry report dated 15.04.2014 (Annexure-16), order dated 01.04.2015 rejecting the petitioner's review application (Annexure-23) as well as the order dated 19.02.2015 (Annexure-22) are set aside and the matter is remanded to the Additional Secretary, General Administration Department, Govt. of Bihar, Patna (respondent no.5) for passing orders afresh after obtaining a fresh inquiry report in accordance



with law and upon grant of an opportunity of hearing to the petitioner, preferably within a period of four months from the date of receipt/production of a copy of this judgment.

11. The writ petition stands allowed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.08.2021
Transmission Date	N/A

