

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7378 of 2021

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Ghanshyam Ravidas Son of Krishna Ravidas, resident of village and P.O.-
Baruna, P.s.- Fatuha, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Social Welfare, Government of Bihar, Patna
2. The Additional Chief Secretary, Department of Social Welfare, Government of Bihar, Patna
3. The Special Secretary, Department of Social Welfare, Government of Bihar, Patna
4. The Director, Department of Social Welfare, Government of Bihar, Patna
5. The Joint Director (H.Q.) Department of Social Welfare, Government of Bihar, Patna
6. The Divisional Commissioner, Purnea Division, Purnea,
7. The District Magistrate, Araria

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhishek Kumar
For the Respondent/s : Mr. Asit Kumar Jha, AC to GP II

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 10-08-2022

Heard learned counsel for the petitioner as well as
learned State counsel.

2. The petitioner is aggrieved by the notification issued by the Special Secretary (Respondent No. 3), whereby minor punishment imposed on the petitioner, pursuant to inquiry, being withholding of two increments with non-cumulative effect, has been revised to a major penalty of withholding of three increments with cumulative effect.



3. The impugned order (Annexure 7) is dated 18.03.2020 and from perusal of the same, it is apparent that prior to revising the minor punishment, the Revisional Authority has not afforded the petitioner any opportunity. The petitioner has, thus, been visited with the major punishment by invoking the revisional powers in the Revisional Authority without affording him any opportunity.

4. The respondent-State counsel, however, submits that the order *ex facie* gives the circumstances under which the punishment was enhanced.

5. The brief background, which is not disputed, is that a juvenile, who was in the observation home, was physically assaulted by the security guard. The petitioner was proceeded against, as the authorities have considered him to be lacking in due diligence to take appropriate steps/measures within time to prevent or to follow up such lapses by the security guard.

6. The petitioner's counsel has taken a plea that since he was In-charge Additional Assistant Director at various places, it cannot be said to be a case of any kind of lack of diligence on his part.

7. The Court would observe that the imposition of minor punishment i.e., withholding of two annual increments



without cumulative effect, having regard to the nature of lapse, does not require any interference. The plea taken by the petitioner that he was over-worked, cannot be a plea so as to sustain any kind of diligence, which has been dealt with, in the opinion of this Court, by commensurate penalty of withholding of two annual increments.

8. The other issue, which remains, is whether the same could have been revised by the Revisional Authority without affording the petitioner any opportunity.

9. Being aggrieved by the Revisional Authority order, the petitioner has filed an application before the Special Secretary, which has been disposed of by an order dated 04.12.2020, on which the State counsel has placed reliance.

10. The last paragraph of the order, which is relied upon, reads as follows:

"इसी तरह जहाँ तक CBI के Report के आधार पर दंडित करने एवं दंडित करने के पूर्व CBI के Report की प्रति इन्हें उपलब्ध नहीं कराने के दावों का प्रश्न है तो उल्लेखनीय है कि CBI Report के पूर्व भी आपको दोषी ही माना गया था। साथ ही CBI के जांच प्रतिवेदन में यह प्रतिवेदित है कि



आपके द्वारा अपने कार्यकाल में उचित संख्या में निरीक्षण नहीं करने की लापरवाही के साथ-साथ Juvenile बांका यादव के साथ पुलिस कान्सटेबल वीर बहादुर सिंह के द्वारा मारपीट की घटना के संज्ञान के बावजूद इसकी सूचना वरीय पदाधिकारियों को नहीं दी गयी। CBI के Report का यह निष्कर्ष अभिलेख आधारित निष्कर्ष है जिसकी प्रति इन्हें दंडित करने के पूर्व इन्हें उपलब्ध करा देने से भी इनके मामले के गुण-दोष पर कोई प्रभाव संभावित नहीं था साथ ही लिया गया निर्णय CBI के जां प्रतिवेदन के आधार पर नहीं अपितु पूर्व के प्रपत्र क एवं विभागीय कार्यवाही में आरोप की प्रमाणितकता के आधार पर ही है, अतएव उपर्युक्त के आलोक में आपके पुनर्विचार आवेदन को अस्वीकृत करने का निर्णय लिया गया है।

अतः विभागीय अधिसूचना सं० -1893 दिनांक 18.03.2020 द्वारा के आलोक में आपके द्वारा दिये गए पुनर्विचार आवेदन को अस्वीकृत किया जाता है।"

11. From bare perusal of the same, it is apparent that no opportunity has been granted to the petitioner before



enhancing the minor punishment to a major punishment by the Revisional Authority.

12. In this connection, this Court would consider it appropriate to take notice of Rule 28 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, {for short 'Bihar (CCA) Rules'} dealing with the revisional powers in respect of conduct of proceedings. The proviso to Rule 28 clearly prescribes that an order imposing or enhancing any penalty is to be made by the revising authority after giving a reasonable opportunity of making a representation against the penalty proposed. It further provides that where it is proposed to impose any of the penalties specified in Clauses (vi) to (x) of Rule 14 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, the same could not be imposed without an inquiry in the manner laid down in Rule 17 and without giving a reasonable opportunity to the Government servant concerned.

13. The State counsel has not been able to point out that any of the steps specified in the proviso to Rule 28 of Bihar (CCA) Rules, has been followed before enhancing the punishment of the petitioner to withholding of three increments with cumulative effect.



14. The order, therefore, is unsustainable being suffering from the vice of procedural lapses, as contained in Rule 28 of Bihar (CCA) Rules. The order dated 18.03.2020, in so far as it enhances the penalty to withholding of three increments with cumulative effect, is hereby quashed. Writ petition is allowed.

15. The petitioner would be entitled to be paid consequential benefits in accordance with law.

16. The State counsel submits that the State be given liberty to comply with the provisions. The said submission is being noted without any observation in as much as, it is needless to say that it is always open for the State authorities to take steps in accordance with law.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
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