

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17317 of 2014

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Binay Kumar Sriwastav, S/o Late Jugesh Chandra Prasad, Resident of
Mohalla Allahabad Bank Colony, Police Station Rajiv Nagar, District Patna.
... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner Excise, Govt. of Bihar, Patna.
3. The Assistant Commissioner Excise, Govt. of Bihar, Patna.
4. The Registrar, Department of Excise, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amar Nath Gupta, Advocate
For the Respondent/s	:	Mr. Kumar Shanu, AC to AG Ms. Sonali Kishore, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 10-01-2023 This writ petition has been filed for the following
reliefs:

(i) To quash the order contained in Memo No. 3287 dated 01.08.2014 (Annexure-8), issued under the signature of Respondent Secretary to Excise Commissioner, withholding 50% pension and gratuity without application of mind and without giving any proper opportunity of hearing, violating principles of natural justice under Rule-139 (b) on the ground of presumed loss to the State Revenue and not on the ground mentioned under Rule-139 (b) of Bihar Pension Rules, 1950.

(ii) To command and direct the respondents not to deduct any amount from Pension and Gratuity payable to the petitioner and if already deducted refund the same with interest.



(iii) To grant any other appropriate relief or reliefs to which the petitioner is found entitled for.

Learned counsel for the petitioner submits that while the petitioner was posted as Excise Constable in the Department of Excise a departmental proceeding was initiated against the petitioner vide Memo No. 6347 dated 10.12.2012. Pursuant to aforesaid departmental proceeding a show-cause notice was issued against the petitioner vide Letter No. 74 dated 24.05.2013. In compliance of the aforesaid notice petitioner filed his show-cause on 12.06.2013. During pendency of the departmental proceeding the petitioner superannuated on 31.07.2013 and thereafter the proceeding was converted under Rule-43 (b) of the Bihar Pension Rules vide order contained in Memo No. 3353 dated 21.10.2013. Thereafter, allegedly a second show-cause notice was issued by the Respondent Authority in the said departmental proceeding on 10.06.2014 against the petitioner and thereafter, order of punishment was passed on 01.08.2014 (Annexure-8).

It is submitted on behalf of the petitioner that petitioner was never given the opportunity to file reply to the second show-cause notice as the same was never served upon him and without service of second show-cause notice along with



enquiry report the order of punishment has been passed which is in violation of principle of natural justice and against Rule 43 (b) of the Bihar Pension Rules.

Learned counsel for the State is unable to controvert the contention made on behalf of the petitioner. However, he submits that the enquiry report submitted by the Conducting Officer was duly examined by the disciplinary authority in the light of materials available on record and did not agree with the finding of the enquiry officer that the charges have been partly proved and found that the petitioner was fully responsible for preparing permits on the basis of forged and fabricated challans. Memo No. 2411 dated 10.06.2014 second show-cause notice enclosing a copy of enquiry report was issued against the petitioner with a direction to submit his reply to the same within a fortnight failing which it will be presumed that he has nothing to say in the matter and final decision in the departmental proceeding will be taken. Petitioner did not submit reply to the second show-cause notice within the stipulated period. Thereafter, the matter was duly examined by the disciplinary authority in the light of the materials available on the record including the enquiry report and the explanation submitted by the petitioner (Annexure-5/1) before the conducting officer and



the petitioner was found fully responsible for issuance of permits in question on the basis of forged and fabricated challans. Considering the gravity of the misconduct committed by the petitioner, the impugned order of punishment with regard to withholding of 50% of the amount of pension and gratuity was passed by the disciplinary authority.

Considering the rival submission of the parties and the materials available on record it is admitted fact that the enquiry report, said to have been issued by the respondent authority, was never served upon the petitioner. The statement made by the petitioner in the writ application has nowhere denied by the respondents in the entire counter affidavit.

In view of the aforesaid discussion and for the reasons indicated above, this Court finds that the impugned order dated 01.08.2014 is bad in law and is, accordingly, quashed.

However, it is clarified that since this Court has quashed the impugned order only on the ground of procedural infirmity and violation of principle of natural justice, the respondents are granted liberty to pass a fresh order but only after serving second show-cause notice with enquiry report and taking into consideration the reply to the second show-cause notice of the petitioner.



Such order against the petitioner, if any, must be filed within a period of four months from the date of receipt/production of a copy of this order.

Writ petition is accordingly allowed only to the above extent.

(Prabhat Kumar Singh, J)

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