

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10143 of 2016

Mustaf Hafizur Rahman, Son of Abdur Rahman, Resident of Village Masna,
P.O. Masna, P.S. Radhanagar, District Sahebganj Jharkhand

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, Department of General Administrative, Government of Bihar, Patna.
2. The Commissioner, Purnea Division, Purnea.
3. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
4. The Under Secretary, General Administration Department, Government of Bihar, Patna.
5. The District Magistrate, Purnea, District- Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Sanjay Kumar, Advocate Mr. Sanket, Advocate
For the Respondent/s	:	Mr. Upendra Pratap Singh, AC to SC-4

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 17-01-2023 This writ application has been filed seeking quashing of resolution No. 13924 dated 26.08.2013 whereby petitioner has been visited with minor penalty of reduction to a lower stage in the time scale of pay for a period of one year without cumulative effect under Section 14(iv) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

Short facts of the case is that this petitioner was posted as Sub-Divisional Officer-cum-Licensing Officer, Bayasi, District Purnea. A memo of charge was framed vide letter No. 1781 dated 09.05.2008 (Annexure-8). Pursuant to the



memo of charges, enquiry was conducted and petitioner was exonerated from all the charges made by enquiry officer in his report dated 20.03.2012 (Annexure-16). Thereafter, further enquiry was directed to be conducted on the same set of charges and on second enquiry, petitioner was again exonerated from all the charges as the department failed to bring any fresh material evidence to substantiate the charges. Differing with the same, a second show-cause notice was issued and thereafter, impugned order of punishment was passed.

Following submissions have been made on behalf of the petitioner:

(i) Pursuant to the order imposed, the petitioner vide letter No. 584 dated 28.04.2016 filed a review application before the Principal Secretary, General Administrative Department, to recall the order of punishment but till date it has remained unanswered. Imposition of said punishment upon the petitioner is totally unjustified and basis upon which the punishment has been imposed upon the petitioner is contrary to the charge that has been alleged against the petitioner. While the inspection to enquiry that had been conducted and reported by teams constituted by the Commissioner, Purnea Division, was confined to the period 2006-07 and of which period, the



petitioner was posted as Sub-Divisional Officer, Baisi only between 01.04.2006 to 06.09.2006. It is submitted that in the entire enquiry report there was nothing to state if the irregularities were for the period 01.04.2006 to 06.09.2006 or for subsequent periods during when Shahnawaz Khan was the Sub-Divisional Officer, Baisi.

(ii) Second ground of attack of the petitioner is that there being no imputation or misconduct or ill-motive assigned, whether mere negligence in discharge of duties per se without any ill-motive or conduct can be considered to be misconduct on which petitioner can be awarded? He submits that unless an ill-motive or blame worthy conduct is alleged and proved, an employee cannot be visited with punishment. In this connection, he relies upon the decisions of co-ordinate Bench of this Court in the case of **Ajay Kumar v. The General Manager, State Bank of India & Others** in C.W.J.C. No. 905 of 2015, reported in 2017 Supreme Court Cases Online Patna 2415 and in the case of **Chandra Shekhar Singh v. State of Bihar & Others** vide order dated 02.08.2022 passed in C.W.J.C. No. 55 of 2020.

(iii) Third ground of attack is that without considering reply to the second show-cause filed by the petitioner, order of punishment has been passed. It was mandatory on the part of the



disciplinary authority to deal with the explanations submitted by the petitioner and assign reasons as to why the explanations submitted by the petitioner has not been found trustworthy or unsatisfactory.

On the other hand, learned counsel for the State, in reply, submits that when the petitioner was posted in the capacity of Sub-Divisional Officer, Baisi in the district of Purnea, it was alleged that due to lack of supervision in inspection of the PDS Shop, major irregularities were found in the lifting and distribution of foodgrains related to BPL. For the said allegation, a departmental proceeding was initiated and after considering the show-cause filed by the petitioner, order of punishment was passed. He next submits that the disciplinary authority after having gone through all the reports of the Conducting Officer and writ petition filed by the petitioner on the point of disagreement, the petitioner has been awarded impugned punishment and as such, writ petition has no merit and deserves to be dismissed.

Having heard learned counsel for the parties and perusal of materials available on record, this Court is of the opinion that impugned order is not sustainable on all the three grounds taken by the petitioner. In this case, charge memo does



not contain any imputation of misconduct or alleged ill-motive or whatsoever. In absence of an ill-motive assigned the same cannot be construed to be misconduct and punishment cannot be awarded. It is settled law that unless some ill-motive or blame worthy conduct is alleged and proved, an employee cannot be visited with punishment. Perusal of the impugned order also goes to show that petitioner has been punished on a charge which was never a part of the original charge-sheet. Thirdly, the explanation which has been submitted by the petitioner was not taken into consideration while inflicting order of punishment which resulted in non-compliance of principle of natural justice and is also in violation of Rule 19 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

In view of aforesaid discussion and for reasons indicated above, this Court finds that the impugned order of punishment suffers from multiple infirmities and as such, the same is not sustainable. The order of punishment vide memo No. 5572 dated 20.04.2016 stands quashed. The consequential order contained in resolution memo No. 13030 dated 23.09.2016 (Annexure-A of the counter affidavit) is also quashed.

Taking into consideration the nature of charge, order



of punishment and the fact that petitioner has already
superannuated from service on 22.02.2017, this Court does not
find it proper to remit the case to the concerned authority.

This writ petition stands allowed.

(Prabhat Kumar Singh, J)

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