IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21044 of 2012

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Navin Kumar Singh, Son of Sri Badri Narayan Singh Resident of Village - Pahsara, P.S. - Naokothi, District – Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Officer On Special Duty-Cum-Deputy Secretary To Government, General Administration Department,
3. The Enquiry Officer-Cum-Divisional Commissioner, Koshi Division, Saharsa
4. The District Magistrate, Supaul
5. Sri Arun Dedhgawer, The Then Sub Divisional Officer, Nirmali, Supaul At Present Working As Addl. Se

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
For the Respondent/s	:	Mr. Anuj Kumar, AC to GP-24

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 19-10-2023

In the instant petition, petitioner has prayed for the following reliefs:-

> *"For issuance of appropriate writ in the nature of certiorari for quashing the Resolution contained in Memo No. 01 dated 02.01.12 whereby and whereunder five increments with cumulative effect has been withheld from the date of issuance of the order contained in Annexure-19 as well as order communicated vide Memo No. 3884 dated 14.03.2012 whereby and whereunder the Review petition filed by the petitioner has been rejected. (Annexure-20)."*

2. Petitioner is in the cadre of Bihar Administrative Service. While he was working as a Block Development Officer, Nirmali, Supaul during the year 2005 he is alleged to have committed certain irregularities insofar as implementation of Indira Awas Yojna. On this issue, charge memo was issued on 23.12.2006. On receipt of petitioner's explanation and it was not satisfied by the disciplinary authority. Therefore, disciplinary authority proceeded with the departmental inquiry. Five charges were framed whereas charge no. 5 was proved and first four charges were not proved. Consequently, the disciplinary authority proceeded to issue second show cause notice and petitioner had submitted his reply on 28.06.2011. In this matter, opinion of the Bihar Public Service Commission (for short 'BPSC') is warranted in the light of specific Rule. BPSC has expressed its opinion, it is not a case for imposition of withholding of five increments with cumulative effect and warning is sufficient. However, disciplinary authority disagreeing and dissatisfied with the opinion expressed by the BPSC and it is also not binding on the disciplinary authority, therefore, proceeded to impose the penalty of withholding of five increments with cumulative effect on 02.01.2012. Feeling aggrieved and dissatisfied with the imposition of penalty of withholding of five increments with cumulative

effect, petitioner had preferred review petition and it was rejected on 14.03.2012, hence, the present petition.

3. Learned counsel for the petitioner pointed out various *lacunae* in the entire departmental inquiry. It is also submitted that charge no. 5 has not been proved in the manner known to the law, to the extent adducing of evidence, reply to the second show cause notice has not been considered in true spirit. So also the reviewing authority has not considered each of the contention raised before the reviewing authority.

4. *Per contra,* learned counsel for the respondents resisted the aforesaid contentions and submitted that disciplinary authority has followed the relevant provision of law and so also inquiring officer. Charge no. 5 is relating to alleged involvement in the corruption. It is also submitted that petitioner was not making necessary entries from time to time in respect of implementation of Indira Awas Yojna. Disciplinary authority has also taken note of petitioner's reply as well as BPSC opinion before imposing the penalty of withholding of five increments, hence, no interference is called for.

5. Heard learned counsel for the respective parties.

6. Undisputed facts are that petitioner was in the cadre of Bihar Administrative Service. While he was holding the post of

Block Development Officer, Niramli, Supaul, in the year 2005. He had alleged to have involved in corruption matter in respect of implementation of Indira Awas Scheme. Perusal of the records, *prima facie* there is no specific evidence with reference to any of the incident. However, the incident of belatedly making entries in the office record, in respect of implementation of Indira Awas Scheme and it was apprised by the presenting officer before the inquiring authority. Further, this Court had noticed that petitioner had submitted his detailed explanation to the second show cause notice along with the inquiring officer's report. However, perusal of the disciplinary/reviewing authorities' order there is no consideration. In other words, *prima facie,* the very object of providing show cause notice and seeking explanation is defeated, in non-consideration of reply to the second show cause notice. Moreover, imposition of penalty of withholding of five increments with cumulative effect is too harsh having regard to certain allegations relating to making certain entries in the relevant office records belatedly. At the best, disciplinary authority would have imposed the minor penalty. Withholding of five increments without cumulative effect would be a minor penalty. Therefore, the petitioner has made out a *prima facie* case so as to interfere with the impugned order.

7. Accordingly, impugned orders dated 02.01.2012 & 14.03.2012 (Annexure-19 & 20) are set aside. Hence, writ petition stands allowed. Disciplinary authority is hereby directed to re-examine from the date of receipt of petitioner's reply to the second show cause notice and also to take note of alleged proved charge relating to certain belated entries made by the petitioner and proceed to impose minor penalty. The above exercise shall be undertaken within a period of three months from the date of receipt of this order. Disciplinary authority, if he imposes a particular penalty, thereafter, petitioner's pay fixation is required to be undertaken with reference to date of his retirement and other service particulars. The same shall be undertaken within a period of six months from the date of passing of final order in departmental inquiry.

(P. B. Bajanthri, J)

Vikash/-

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