

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13715 of 2016

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Gauri Shankar Mishra son of Chandrika Mishra resident of village -
Sultanganj Bhagalpur, P.S. - Sultanganj, District - Bhagalpur.

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary Government of Bihar Patna
2. The Principal Secretary, Art, Culture and Youth Department, Bihar, Patna.
3. The Director of Museum, Bihar, Patna.
4. The Regional Deputy Director, Museum, Bihar, Patna.
5. The Curator Chandradhari, Museum, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Madhura Nand Jha, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 12-01-2023

Heard learned counsel for the petitioner and the State.

2. Writ petition has been filed for quashing order dated 20.3.2015 (Annexure 5 to the writ petition) by which while awarding punishment of censure his two increments have been withheld with cumulative effect.

3. Learned counsel for the petitioner assails the impugned order on the ground that the petitioner had been exonerated in the enquiry report. However, without supply of copy of the enquiry report and second show cause, the Disciplinary Authority passed order of punishment and thus the petitioner was deprived of hearing before passing the order of punishment,



contrary to the findings of the enquiry report. Reliance is place on the decision of the Hon'ble Apex Court rendered in the case of **Punjab National Bank and others Vs. Kunj Bihar Mishra**, reported in **(1998) 7 SCC 84**.

4. On the other hand, learned counsel appearing for the State supports the impugned order and submits that the impugned order does not suffer from any illegality as the same has been passed after following due procedure of law and also after giving adequate opportunity to the petitioner for defending himself in the enquiry proceeding as well as in the departmental proceeding.

5. However, learned counsel for the State does not controvert the submission of the petitioner's counsel that the petitioner was neither served a copy of the enquiry report nor he has been given opportunity of hearing by way of issuing 2nd show cause to him before awarding major punishment of withholding two increments with cumulative effect. Counter affidavit is silent on this factual aspect of the matter.

6. It is admitted position that the petitioner was exonerated in the enquiry and without giving him notice of disagreement and second show cause, the Disciplinary Authority passed impugned order of punishment differing with the enquiry report. In the case of **Kunj Bihari Mishra (supra)** it has been



held that *“It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case(supra).”*

7. On careful consideration of the rival submissions of the parties as also the legal precedent discussed above, this Court is of the view that the Disciplinary Authority has passed order of punishment in violation of law laid down by this Court as well as disciplinary rules, as such, the impugned order of punishment dated 20.3.2015 is hereby set aside.

8. Since, this Court has quashed the impugned order only on the ground that the petitioner was not given opportunity to explain his case before passing impugned order of punishment and its being in violation of the principle of natural justice, matter is remitted to the Disciplinary Authority from the stage of enquiry. Liberty is given to the respondents to pass a fresh order after



issuing the petitioner second show cause with a copy of the enquiry report and on consideration of his reply thereof, within a period of two months from the date of receipt of the 2nd show cause reply.

9. Writ petition is accordingly allowed only to the extent indicated above.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.1.2023.
Transmission Date	

