

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10078 of 2012

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Sunil Kumar Son Of Sri Anoop Lal Das Resident Of Village- Kalarampur,
P.S.- Naya Ram Nagar, District- Munger

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of General Administration, Government Of Bihar, Patna
2. Principal Secretary, Department Of General Administration, Government Of Bihar, Patna
3. Additional Secretary, Department Of General Administration, Government Of Bihar, Patna
4. Under Secretary, Department Of General Administration, Government Of Bihar, Patna
5. Divisional Commissioner, Kosi Division, Saharsa
6. Divisional Commissioner, Tirhut Division, Muzaffarpur
7. District Magistrate, Sitamarhi
8. District Magistrate, Madhepura
9. Deputy Collector, District Establishment, Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Parasmani, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
	:	Mr. Ajit Kumar, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 03-01-2024

Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for quashing the Memo No.11485 dated 13.10.2011 issued under the signature of the respondent no.4 by which the petitioner has been punished withholding of the five increments with cumulative effect and further he has been held to be not entitled



for anything other than Subsistence Allowance during the period of his suspension.

3. Learned counsel for the petitioner submits that the petitioner was appointed as a Deputy Collector on 02.01.1987. In the Year, 2008 Madhepura P.S. Case No. 135 of 2008 was instituted against him and thereafter a departmental proceeding was also initiated against the petitioner.

4. On 24.09.2008, the petitioner was suspended under Rule 9(1)(Ka) of the Bihar Civil Services (Classification, Control and Appeal) Rules, 2005. The concerned authority has directed the petitioner to submit his explanation to the memo of charge. On 16.04.2009, the petitioner submitted his reply to the memo of charge. In the year, 2009, the police has submitted a final form in favour of the petitioner. During the pendency of the proceeding, the petitioner has approached to this Hon'ble Court in C.W.J.C. No. 7025 of 2010 (*Annexure-17*). The Hon'ble Court by its order dated 17.05.2010 allowed the writ petition with the direction to the concerned respondents to conclude the departmental proceeding within a period of 6 months from the date of receipt/production of the copy of the order. On 08.12.2010, the petitioner has informed the Deputy Secretary, Department of General Administration as well as



Commissioner about denial of opportunity to the cross examination after furnishing the statement of the witnesses. On 13.12.2010, Enquiry Report was forwarded to the Principal Secretary, Department of General Administration. On 23.03.2011, second show-cause notice was issued to the petitioner. On 11.04.2011, the petitioner submitted his reply to the second show-cause notice and without considering the reply to the second show-cause notice the authority has passed the impugned order without considering the contention of the petitioner.

5. Learned counsel for the petitioner further submits that when the matter of the petitioner was forwarded to the B.P.S.C. for approval, the B.P.S.C. has categorically stated that the punishment is harsh and three increments with cumulative effect is the sufficient punishment for the petitioner but without considering the fact that the same the authority has passed the impugned order withholding the five increments with cumulative effect and further held that the petitioner is not entitled for anything other than the Subsistence Allowance.

6. Learned counsel for the petitioner submits that inspite of request for supplying the copy of the statement of witnesses and cross-examination of the witnesses, the same was



not done and the petitioner was deprived of defending himself in an effective manner. He has referred paragraph 14 of the judgment reported in **2009 2 (SCC) 570 (Roop Singh Negi vs. Punjab National Bank)** which are quoted herein below;

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

7. Learned counsel for the State, on the other hand, submits that the proceeding was in accordance with the rules and there is no infirmity in the impugned order and the authority has considered all the issues raised by the petitioner in the second show-cause.

8. In view of the aforesaid, it appears that the



authority had not considered the contention of the petitioner and inspite of request for supplying the copy of the statement of witnesses and cross examination of the witnesses. The petitioner was deprived of defending himself in the proceeding and passed the impugned order which is not sustainable in law.

9. Therefore, the punishment order dated 13.10.2011 as contained in Annneuxre-24 is quashed. The respondents are directed to start a fresh proceeding in accordance with law, after following the Principle of Natural Justice, supplying the copy of statement of witnesses and giving opportunity of cross examination of witnesses in accordance with Rule/Law and conclude the same within a period of six months from the date of receipt/production of the copy of this order.

10. The writ application is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.01.2024
Transmission Date	N/A

