**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 8257 of 2022**

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Adarsh Vaibhav Son of Sri Davendra Kumar, Resident of Mohalla- Chhota Bariyarpur, P.O.- Motihari Court, P.S.- Chhatauni, District- East Champaran, Bihar- 845401 presently residing at Everest 201, Jalalpur Height Apartment, R.P.S. More, Bailey Road, P.S.- Danapur, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary-cum- Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum- Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Board of Revenue through its Chairman-cum- Member, Government of Bihar, Patna.
4. The Special Secretary, Cabinet Secretariat-cum- Inquiry Officer, Government of Bihar, Patna.

... ... Respondent/s

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**Appearance:**

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| For the Petitioner/s | : | Mr. Kumar Kaushik, Advocate<br>Mrs. Namrata Dubey, Advocate |
| For the State | : | Mr. P. K. Verma (AAG-3)<br>Mrs. Divya Verma, AC to AAG-3 |

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 20-02-2024**

The present writ petition has been filed for setting aside the order dated 27.07.2020, passed by the Under Secretary to the Government, General Administration Department, Government of Bihar, Patna, whereby and whereunder the petitioner has been inflicted with the punishment of withholding of two increments with cumulative effect and further it has been directed that the petitioner shall not be promoted for a period of three years, to be counted after the lapse of the first punishment. The petitioner has also prayed for quashing of the revisional order dt. 06.10.2021, passed by the Under Secretary to the Government, General Administration Department, Government of Bihar, Patna, whereby and whereunder the modification made in the order of punishment dated 27.07.2020, vide the appellate order dated 22.04.2021, passed by the Chairman-cum-Member, Board of Revenue in Service appeal No. 12 of 2020, to the effect that the petitioner shall be visited with the punishment of withholding of two increments with non-cumulative effect has been revised and instead the punishment imposed upon the petitioner, by the aforesaid order dated 27.07.2020, has been revived and it has been directed that the same would remain unchanged.

2. Shorn of unnecessary details, it would suffice to state that the petitioner had joined Government services on 24.02.2014 as a Secretariat Assistant and while he was posted in the Bihar Technical Services Commission, a charge-sheet was framed and a departmental enquiry was initiated against the petitioner, which culminated into issuance of an order of punishment dated 27.07.2020, contained in Memo No.6852, whereby and

whereunder the petitioner was inflicted with the punishment of stoppage of two increments with cumulative effect and withholding of promotion for a period of three years. The petitioner had then challenged the said order dated 27.07.2020, by filing an appeal, whereupon the appellate authority, by an order dated 22.04.2021, had reduced the punishment and limited it to that of withholding of two increments with non-cumulative effect. Nonetheless, the revisional authority, in purported exercise of powers under Rule 28 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the "Rules, 2005") has revised the quantum of punishment, as imposed vide the appellate order dated 22.04.2021 and has instead revived the punishments, inflicted upon the petitioner by the aforesaid order dated 27.07.2020 and it has been directed that the same would remain unchanged, which in the submission of the Ld. Counsel for the petitioner, is contrary to law, inasmuch as no order imposing or enhancing any penalty can be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed.

3. *Per contra*, though the learned counsel for the

respondents has submitted that the revisional authority has the power to revise the punishment under Rule 28 of the Rules, 2005, nonetheless it has been admitted in paragraph no.5 of the supplementary counter affidavit filed today in the Court itself, which has been taken on record that neither any show-cause was ever served upon the petitioner nor any opportunity was granted to the petitioner to make a representation against the penalty proposed by the revisional authority, leading to passing of the impugned revisional order dated 06.10.2021.

4. I have heard the learned counsel for the parties and perused the materials on record.

5. At this juncture, it would be relevant to reproduce herein below Rule 28 of the Rules, 2005:-

> *"**28. Revision** - (1) Notwithstanding anything contained in these Rules,-*
>
> *(i) the Government, or*
>
> *(ii) the head of a department directly under the Government, in the case of a Government servant serving in a department or office, under the control of such head of a department, or*
>
> *(iii) the appellate authority, or*
>
> *(iv) any other authority specified in this behalf by the Government by a general or special order, and within*

*such time as may be prescribed in such general or special order, may at any time within six months of the date of the order proposed to be revised, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Rules or under the Rules repealed by the Rule 32 (from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed), after consultation with the Commission where such consultation is necessary, and may-*

*(a) confirm, modify or set aside the order, or*

*(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or*

*(c) remit the case to the authority, making the order or to any other authority, directing such authority, to make such further inquiry as he may consider proper in the circumstances of the case, or*

*(d) pass such other orders as it may deem fit:*

*Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses(vi) to (x) of Rule 14 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed without* *an inquiry in the manner laid down in Rule 17 and after giving a reasonable opportunity to the Government Servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary:*

*Provided further that rib power of revision shall be exercised by the head of department, unless-*

*(i) the authority which made the order in appeal, or*

*(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.*

*(2) No proceeding for revision shall be commenced until after*

*(i) the expiry of the period of limitation for an appeal, or*

*(ii) the disposal of the appeal, where any such appeal has been preferred.*

*(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules."*

6. A bare perusal of the aforesaid Rule 28 of the Rules, 2005 would show that the same postulates that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed.

7. Thus, considering the fact that the respondents have admitted that no opportunity was granted to the petitioner by the revisional authority of making a representation against the penalty proposed, the impugned order dated 06.10.2021 passed by the revisional authority is not only perverse but also contrary to Rules 28 of the Rules, 2005 and is also attended with malafides, thus is quashed. Consequently, the appellate order dated 22.04.2021, passed by the Chairman-cum-Member, Board of Revenue in Service appeal No. 12 of 2020, to the effect that the petitioner shall be visited with the punishment of withholding of two increments with non-cumulative effect, stands revived. I may hasten to add here that the Ld. Counsel for the petitioner has submitted that the petitioner is satisfied with revival of the Appellate order dated 22.04.2021, hence, there is no point in assailing the order of punishment dated 27.07.2020, passed by the Under Secretary to the Government, General Administration Department, Government of Bihar, Patna, since the same has already stood modified by the aforesaid appellate order dated 22.04.2021.

8. It is needless to state that since the present case is a case of gross injustice meted out to the petitioner by the respondents and the materials on record sufficiently demonstrates that the

principles of natural justice has been given a go by as also the proceedings are attended with *mala fide*, I deem it fit and proper to direct the respondents to give a quietus to the matter in issue in the present proceeding.

9. The writ petition stands allowed.

**(Mohit Kumar Shah, J)**

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| **AFR/NAFR** | AFR |
| **CAV DATE** | NA |
| **Uploading Date** | 09.03.2024 |
| **Transmission Date** | NA |