

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5503 of 2018

- 1.1. Pan Kumari Devi @ Pan Kunwar Wife of Late Kanhaiya Paswan, Resident of Village-Bhurkunda, P.S. Goh, District- Aurangabad.
- 1.2. Sunita Kumari Married daughter of late Kanhaiya Paswan, Resident of Village-Bhurkunda, P.S. Goh, District- Aurangabad.
- 1.3. Mahendra Kumar S/o. Late Kanhaiya Paswan, Resident of Village-Bhurkunda, P.S. Goh, District- Aurangabad.
- 1.4. Dharmendra Kumar S/o. Late Kanhaiya Paswan, Resident of Village-Bhurkunda, P.S. Goh, District- Aurangabad.
- 1.5. Debanand Kumar S/o. Late Kanhaiya Paswan, Resident of Village-Bhurkunda, P.S. Goh, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, (Home Department), Bihar, Patna.
3. The Inspector General of Prison and Sudhar Services, Bihar, Patna.
4. The Joint Secretary-cum-Director, Administration, Prison and Sudhar Services, Bihar, Patna.
5. The Superintendent, Model Central Prison, Beur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3, Advocate
For the Respondent/s : Mr. Manish Kumar, GP-4

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 25-06-2024

Heard learned counsel for the petitioners and
learned counsel for the State.

2. The present writ petition has been filed by the
petitioner to quash the order contained in Memo No.597 dated
31.01.2014 (Annexure-1) passed by the Disciplinary Authority
by which the punishment of imposition of stoppage of one



increment with cumulative effect with direction that nothing will be paid for the period of suspension except subsistence allowance, however, the said period will be counted for pension and further to quash order contained in Memo No.4887 dated 16.07.2018 (Annexure-11) by which the appellate authority has rejected the appeal of the petitioner.

3. Learned counsel for the petitioner submits that the petitioner was posted as Warder, Model Central Prison, Beur, Patna, and he was placed under suspicion vide Memo No.41 dated 18.02.2012 on the allegation of omission and commission done by the petitioner during his course of duties. Counsel for the petitioner submits that charge Memo has been issued on 23.02.2012 and it was decided by respondent No.3 vide Memo No.1130 dated 20.03.2012 to initiate the departmental proceeding against the petitioner. Learned counsel for the petitioner submits that the said charge memo and decision to initiate the departmental proceeding has been made in gross violation of CCA Rules, 2005. Counsel submits that in the light of the decision taken by the disciplinary authority to participate before the Enquiry Officer, the petitioner appeared before the Enquiry Officer, submitted his explanation well within time and the Enquiry Officer found him guilty. But the



higher official by virtue of Memo No.540 dated 30.01.2013 had taken a decision to submit a fresh enquiry report appointing subsequent Enquiry Officer to conduct the enquiry in accordance with law after taking care of defects of earlier enquiry report. In the subsequent enquiry, the Enquiry Officer had found charge No.1 against the petitioner not proved and charge No.2 found proved. Learned counsel for the petitioner submits that second show-cause had been issued against the petitioner. In response thereof the petitioner had submitted his second show-cause before the competent authority on 19.02.2013. But punishment order had been passed vide Memo No.597 dated 31.01.2014. Counsel submits that none of his points which he had taken in the second show cause have been considered by the disciplinary authority and punishment order has been passed. Counsel further submits that being aggrieved and dissatisfied with the punishment order the petitioner has preferred appeal before the appellate authority raising all his points which he has stated in Annexure-10. Counsel submits that at the time of passing the final order, which is Annexure-11 to this petition, neither the points taken in the show-cause nor any points taken in the memo of appeal has been considered at all and complete cryptic order has been passed and, therefore, he



submits that both orders be set aside.

4. Learned counsel further submits that during the pendency of the writ petition the delinquent died and his heirs and legal representatives have been substituted and they are defending this case and, therefore, the petitioners are entitled for all the benefits which is attached to the original petitioner of the writ petition.

5. Learned counsel for the State, on the other hand, submits that the petitioner was posted at Central Jail, Beur, Patna, and he was found negligent, irresponsible and arbitrary in duty and behaviour, due to which on the ground of dereliction of duty and irresponsible behaviour he was suspended and departmental proceeding has been initiated against him and charges were framed. Opportunity has been granted to the petitioner to defend himself. Enquiry Officer has found one charge proved and one charge not proved. Counsel submits that opportunity of second show-cause was provided to the petitioner then punishment order has been passed. The petitioner thereafter preferred memo of appeal and his appeal has also been rejected. Therefore, according to him, there is no violation of any law and order passed by the disciplinary authority is well within jurisdiction and fit to be sustained.



6. Upon hearing the parties as well as going through the impugned orders, which are under challenge, it transpires to this Court that the petitioner at the time of filing the show-cause had taken series of points, which are specific and categorical. Similarly, in the memo of appeal he has taken series of points, but neither in the original order nor in the appellate order any of the points taken by the petitioner in show-cause or memo of appeal has been considered at all. Passing such type of order is not permissible in law and, therefore, this Court is of the view that both the orders are not sustainable in law and, hence, both the impugned orders, contained in Memo No.597 dated 31.01.2024 (Annexure-1) and Memo No.4887 dated 16.07.2018 (Annexure-11) are hereby set aside. Respondent-authorities are directed to take legal steps in accordance with law.

7. Accordingly, the writ petition is hereby allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2024
Transmission Date	NA

