IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5095 of 2018

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Pankaj Kumar Son of late Shyam Sundar Prasad Resident of Mohalla-Ishaque Chak, P.S. Ishaque Chak, District- Bhagalpur, at present posted as Sub- Inspector, Excise, in the Office of Superintendent of Excise, Purnea.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, New Secretariat, Bihar, Patna
2. The Commissioner, Registration, Excise and Prohibition Department, New Secretariat, Bihar, Patna.
3. The Secretary to Commissioner, Registration, Excise and Prohibition Department, New Secretariat, Bihar, Patna
4. The Superintendent of Excise, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kaushalesh Choudhary, Adv.
For the State	:	Mr. Raghwanand, G.A.-11,
		Mr. Prabhat Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 19-09-2024

The petitioner is a Sub-Inspector in Excise Department, Purnea. On 6th May, 2016, while the petitioner and other members of Excise Department were conducting duty near Dalkola Check Post in the District of Purnea, they stopped a Bus bearing Registration No. BR11PA-1219 of Krishna Travel and recovered 14 bottles of foreign liquors from the said Bus.

2. It is alleged that for illegal transportation of foreign liquor, which is prohibited item in the State of Bihar, the petitioner

demanded bribe of Rs. 50,000/-. However, a sum of Rs. 20,000/- was paid to him. The said allegation was made by the Bus owner on 25.05.2016. On 7th June, 2016, the Bus owner made an initial statement before the superior Officer of the Excise Department. On the basis of said allegation and statement of the Bus owner, the petitioner was put to a departmental proceeding.

3. During departmental proceeding, the Deputy Commissioner, Excise Department held enquiry and in the enquiry report it was observed that the Department failed to prove the departmental charge against the petitioner and there is no reason to continue with the departmental proceeding against him. The enquiry report was placed before the Commissioner, Excise Department, Bihar at Patna and vide order dated 1st February, 2018, the Commissioner differed from the decision of the Inquiry Officer and held the delinquent employee guilty for demanding bribe from the Bus driver. It was also held that the said act of the petitioner violates Rule 3 of the Bihar Government Servants Conduct Rules and accordingly the petitioner was punished with minor punishment of withholding of two increments. Since the Commissioner passed the order in the Departmental proceeding and he being the appellate authority, the petitioner did not file any appeal against the said order before the same authority, on the

contrary the order dated 1st February, 2018 is challenged in the instant writ petition and the petitioner has prayed for quashment of the said order by issuing a writ petition in the nature of certiorari.

4. I have heard the learned Advocate on behalf of the petitioner and the learned Counsel for the State respondents.

5. It is not in dispute that at the time of enquiry, the Presenting Officer failed to produce any witness in support of the charge against the delinquent employee/petitioner. Since no evidence was adduced on behalf of the Department in support of the allegation, the Inquiry Officer found that the charge was not proved.

6. Learned Advocate on behalf of the petitioner refers to a recent decision of the Division Bench of this Court in the case of ***Satyendra Kumar Vrs. The State of Bihar & Ors.*** Reported in ***2024 (3) PLJR 797***.

7. In the said report also the Inquiry Officer held that the charge levelled against the appellant was not proved and came to a decision that the delinquent ought to be exonerated from the charge, but disciplinary authority disagreeing with the Inquiry Officer report imposed penalty of withholding two annual increments without cumulative effect. The appellant has filed his reply to the show cause notice, however in the order of penalty

there is no reference to the appellant's reply. Thus, the Division Bench held that the impugned order was a non-speaking order due to non-compliance of Rule 18 of the Bihar Government Servant (Classification, Control and Appeal), Rules, 2005.

8. Coming to the above conclusion, the Division Bench held that the impugned order of imposition of penalty of withholding of two annual increments without cumulative effect was unjust, unfair and arbitrary and accordingly the order passed by the disciplinary authority was set aside and the respondent was directed to restore appellant's withholding increments and re-fix his pay and pension.

9. The factual aspect of the above reported decision is absolutely similar in a case in hand. The Division Bench in detail discussed the effect of failure of non-compliance of Rule 18 of the Bihar Government Servant (Classification, Control and Appeal), Rules, 2005 and came to the finding that the order of punishment passed by the disciplinary authority cannot be sustained.

10. relying on the aforesaid decision and on careful examination of the facts and circumstances of this case, I also find that the impugned order dated 1st February, 2018 is quashed and set aside.

11. Petitioner’s salary be fixed after granting the increments which the petitioner is entitled in accordance with law governing the salary and emoluments.

12. The petitioner has filed an Interlocutory Application alleging, inter alia, that his promotion was not considered to a higher post as a result of the order of punishment.

13. The cause of action relating to promotion is different from the cause of action of the instant writ petition. There cannot be joinder of two separate causes of actions.

14. In view of such circumstances, I am not in a position to grant any relief in respect of the Interlocutory Application.

15. However, the petitioner is at liberty to file a comprehensive writ petition for redressal of his grievance.

16. Accordingly, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	