

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8789 of 2016

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Aashish Kumar Roshan Son of late Subodh Kumar Singh Resident of
Mohalla-Near Kuwar Singh Colony Kashipur, PS Samastipur, District
Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Revenue and Land Reforms
Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Darbhanga.
3. The District Magistrate, Samastipur.
4. The Additional Collector, Department Proceeding, Samastipur.
5. The Deputy Collector, Establishment , Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ajay, GA-12

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 13-02-2024

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

2. The present writ petition has been filed for the
following reliefs :

*“(i) For quashing order dated 01.03.2016 passed in
Service Appeal Case No. 12 of 2015 passed by Divisional
Commissioner, Darbhanga whereby the appeal preferred
by petitioner against the order dated 01.06.2015 has
been rejected on non-est grounds.*



(ii) For quashing order contained in Memo No. 534 dated 01.06.2015 passed by District Magistrate, Samastipur, whereby punishment of stoppage of promotion has been given to the petitioner on non-est ground.

(iii) The petitioner prays for issuance of a writ in the nature of certiorari for quashing the enquiry report dated 27.01.2015 submitted by Additional Collector, Departmental Enquiry, Samastipur whereby the enquiry officer has proved all the charges against the petitioner in a complete illegal, arbitrary and unauthorized manner.

(iv) In consequent thereof, for issuance of writ/writs of mandamus commanding the respondent authorities to grant all consequential benefits admissible to the petitioner.

(v) For any other releif/reliefs for which petitioner may be found to be entitled in the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that the petitioner was appointed as Upper Division Clerk/Assistant in the district of Samastipur on 04.02.1997. All of a sudden in the year 2014, the petitioner has received a show cause memo issued by the District Magistrate, Samastipur (respondent no. 3) explanation for alleged indiscipline and carelessness on the ground of delay in



issuance of letter after the order passed by the concerned authorities.

4. Learned counsel for the petitioner submits that from perusal of the show cause notice it appears that the respondent had given seven instances in the said letter. Learned counsel for the petitioner submits that thereafter the petitioner has filed his show cause explanation on 29.09.2014 but the respondent no. 3 has initiated departmental proceeding against the petitioner and thereafter Prapatra 'Ka' was issued against the petitioner.

5. Learned counsel for the petitioner submits that the petitioner has filed his reply of the disciplinary proceeding stating therein that there was no deliberate delay on his part and there was no intention to disobey the order of the authority. Learned counsel for the petitioner submits that the authority without considering the explanation submitted by the petitioner, has passed the order only on the basis of the reports submitted by the Presenting Officer. Learned counsel for the petitioner submits that although the petitioner has not annexed the entire order sheet of the proceeding but the State has annexed the entire order sheet of the proceeding which suggests that without examination of any witness the present impugned order has been passed which violation of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, and thereafter the petitioner has preferred an appeal before the Divisional Commissioner, Darbhanga (respondent no. 2) stating



all the facts and the same was dismissed vide order dated 01.03.2016 and from perusal of the punishment order it appears that the appellate authority without applying his mind and without considering the contention of the petitioner has passed the impugned order. He further submits that the appellate authority has passed the order under Rule 14(ii) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules') by which the authority has withholding the promotion of the petitioner without mentioning the period which is mandatory under Rule 14 of the Rules. Learned counsel for the petitioner draws the attention of the Court of Rules-14 Explanation (2) (ii) of the Rules, which reads as follows:

“(ii) Withholding of Promotion.- While awarding the penalty of withholding of promotion, it shall be essential to explain in the order of the disciplinary authority whether this penalty shall be for a particular period or for the whole service period.”

6. Learned counsel for the State submits that both the orders were passed in accordance with law and the ample opportunity was given to the petitioner to present his case before the authority concerned but learned counsel for the State fairly submits that it appears from the ordersheet of the proceeding that



no witnesses were examined in the proceeding and there is non-compliance of Rule-14 of the Rules.

7. In view of the aforesaid, the impugned order passed in violation of Rule 14(ii) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and without considering the contention of the petitioner, that due to work load he has not complied the order within time, and no witness has been examined in the proceeding, the impugned order dated 01.03.2016 passed by the Divisional Commissioner, Darbhanga in Service Appeal No. 12 of 2015, the impugned order dated 01.06.2015 passed by the District Magistrate, Samastipur and the enquiry report dated 27.01.2015 submitted by Additional Collector, Departmental Enquiry, Samastipur are hereby set aside and the writ petition stands allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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