

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21167 of 2021

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Amritosh Kumar S/o Sita Ram Resident of Village- Chainpur, P.S.- Kurhani,
District- Muzaffarpur, At present working as Principal in-charge, Industrial
Training Institute, Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary.
2. The Principal Secretary, Department of Labour Resources, Government of Bihar, Patna.
3. The Director, Employment and Training, Bihar, Patna.
4. The Deputy Secretary to the Government, Labour Resources Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subhash Kumar Mishra
For the Respondent/s : Mr. Sarvesh Kumar (GP24)

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL ORDER

5 02-07-2026 Heard the learned counsel for the petitioner and the

learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for quashing the resolution contained in Memo No. 2303 dated 26.09.2019 by which the petitioner was awarded minor punishment of withholding of three increments with cumulative effect. Further prayer is for quashing Memo No. 992 dated 02.07.2020, whereby the appeal preferred by the petitioner has been rejected.



BRIEF FACTS OF THE CASE

3. The brief facts giving rise to the present writ petition are, that while the petitioner was working as In-charge Principal at Industrial Training Institute, Simari Bakhtiyarpur, he was deputed as Centre Superintendent at Industrial Training Institute, Saharsa, vide letter no. 670 dated 21.07.2018. Since the letter dated 21.07.2018, was sent through email to the petitioner, therefore he reached the Industrial Training Institute, Saharsa on 22.07.2018 and took charge of the centre as Centre Superintendent, for conducting All India Trade Examination 2018, which was scheduled to be held from 24.07.2018. Pursuant to the requisition made by the petitioner, the District Education Officer, Saharsa, vide office order contained in memo no.681 dated 23.07.2018 deputed some teachers as invigilators for conducting examination. The invigilators were required to give their joining at the examination centre at 8. A.M. on 24.07.2018. However, it is the case of the petitioner that all the teachers gave their joining at the centre at about 9 A.M. All of a sudden, an explanation was asked for by the petitioner vide letter no. 703 dated 24.07.2018. In compliance thereof the petitioner submitted his explanation on 26.07.2018, wherein he denied all allegations leveled against him. It is the case of the



petitioner that although vide letter dated 24.07.2018, an explanation was sought for from the petitioner, however the report i.e. the report prepared by the flying squad, on the basis of which the petitioner was issued show cause, was never provided to the petitioner. Subsequently vide memo no. 585 dated 08.03.2019 issued under the signature of the Deputy Secretary, Department of Labour Resource, Government of Bihar, Patna, a decision was taken to initiate departmental proceeding against him and the memo of charge was also issued along with the said letter. Since the report of the flying squad was not provided to the petitioner, the petitioner filed an application under the Right to Information Act to obtain the said report. When the said report of the flying squad was not provided to the petitioner, then the petitioner was constrained to file his reply before the Deputy Secretary, Department of Labour, Government of Bihar, Patna, vide his letter no. 409 dated 25.03.2019, wherein the petitioner gave his reply with regard to each and every charge leveled against him and requested the authorities concerned to exonerate him from the charges, which were leveled against him.

4. The disciplinary authority, without considering the defence taken by the petitioner in his show cause reply,



proceeded to pass the impugned order of punishment contained in memo no. 2303 dated 26.09.2019. The petitioner was inflicted with a punishment of stoppage of three increments with non-cumulative effect. Being aggrieved with and dissatisfied with the order of punishment dated 26.09.2019, the petitioner preferred statutory appeal before the appellate authority i.e. Principal Secretary, Department of Labour Resources, Government of Bihar, Patna on 30.10.2019. It is further case of the petitioner that after filing of the memo of appeal, the petitioner was provided with the document i.e. the report of the flying squad vide letter no. 1332 dated 27.12.2019 issued under the signature of Assistant Director (Examination), Office of the Examination Controller, Labour Resources Department, Government of Bihar, Patna. In the meanwhile, the appeal preferred by the petitioner was heard and rejected by the Deputy Secretary to the Government, Patna vide his memo no. dated 992 dated 02.07.2020.

SUBMISSION ON BEHALF OF THE PETITIONER

5. The learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed as Centre Superintendent on 22.07.2018 and took charge of the said centre on 24.07.2018. He submits that the examination started on 9.30



A.M. and immediately thereafter at 9.45 A.M., the flying squad team visited the school and conducted an inspection. The team found some discrepancies in conduct of the examination i.e. some of the students were found sitting without any sitting arrangement. He submits that when the same was pointed out to the petitioner, immediately the petitioner directed the invigilators to get the students seated according to the seat plan and also scolded the invigilator. He submits that it was not practicably feasible for the petitioner to verify sitting arrangement of each and every candidate and further the seat plan was already affixed at the main gate of centre as well as outside each and every room of the examination centre. He further submits that even two students were expelled for indulging in unfair means.

6. The learned counsel for the petitioner further submits that being the Centre Superintendent, it was not within the domain of the petitioner to interfere in the marks awarded in the practical examination by the external. Since, the same is supposed to be kept confidential as per the procedure of the examination. The learned counsel for the petitioner further submits that even the videography of the centre was being done and the authorities concerned did not bothered to look at the



video footage during course of enquiry to suggest that the petitioner was not at fault.

SUBMISSION ON BEHALF OF THE STATE

7. *Per contra*, the learned counsel appearing on behalf of the State submits that while the petitioner was working as In-charge Principal at Industrial Training Institute, Saharsa, he was appointed as the Centre Superintendent for conducting All India Trade Examination-2018, fairly, in terms of the rule and guidelines. During the said examination, a team of flying squad conducted surprise visit at the centre in question and they found certain irregularities at the centre viz-a-viz that the trainees were not sitting in examination hall in terms of the seat plan and were also found using unfair means, for which two candidates were expelled. The identity cards were not issued to the invigilators, for which the Centre Superintendent i.e. the petitioner herein, did not give any satisfactory reply. He submits that a decision was taken to initiate departmental proceeding against the petitioner, for which memo of charge was issued to him on 08.03.2019 with a direction to submit his reply within 15 days. The reply was submitted by the petitioner on 25.03.2019 and after considering his reply, the disciplinary authority proceeded to award minor punishment of withholding of three increments



with non-cumulative effect. The petitioner being aggrieved with the order of punishment dated 26.09.2019, preferred appeal before the appellate authority. The appeal preferred by the petitioner was duly considered by the appellate authority and by a reasoned order the appellate authority proceeded to reject the appeal preferred by the petitioner on 02.07.2020. He submits that sufficient opportunity was granted to the petitioner to place on record his defence and the principle of natural justice was followed, before inflicting punishment to the petitioner. He submits that even the petitioner in his show cause reply has accepted that there was deficiency on his part, in as much as that he admitted that it was not possible for him to visit the centre and it was the duty of the invigilator to see that whether candidates are sitting as per their allotted seats or not.

CONSIDERATION

8. Having considered the rival submissions and after going through the records, it appears that the petitioner was transferred from Industrial Training Institute, Saharsa on 21.07.2018 and immediately thereafter he gave his joining on 22.07.2018. On 24.07.2018, the examination for All India Trade Examination-2018 was scheduled at the centre in question. The examination was scheduled to start from 9:30 AM and the team



of the flying squad reached there at 9.45 A.M. The flying squad team found certain irregularities at the centre in question, vis-a-vis that some of the candidates were sitting without any sitting plan. The invigilators were not issued the identity cards and two students were found to be using malpractices/unfair means, accordingly, they were expelled. It appears that a show cause notice was issued to the petitioner on 24.07.2018, wherein the deficiencies pointed out by the flying squad team was pointed out to the petitioner and pursuant thereto the petitioner filed his reply on 26.07.2018, wherein he informed about the deficiencies which were pointed out by the flying squad team.

9. It further appears that vide letter dated 08.03.2019, memo of charge was issue to the petitioner and he was directed to gave his reply to the charges leveled against him. The petitioner asked for the report submitted by the flying squad so that he can give his reply in detail, however the same was not provided to the petitioner. In absence thereof, the petitioner filed his reply before the authority concerned i.e. Deputy Secretary, Labour Resources Department, Government of Bihar, Patna. Subsequently vide letter no. 1238 dated 30.05.2019 issued under the signature of the Deputy Secretary, Labour Resources Department, Government of Bihar, Patna, second show cause



notice was issued to the petitioner. The petitioner submitted his reply on 24.06.2019, wherein he gave details of his innocence. The petitioner requested the disciplinary authority to exonerate him from the charges leveled against him. Finally vide order contained in memo no. 2303 dated 26.09.2019 passed by the Deputy Secretary, Department of Labour Resources, Government of Bihar, Patna, the petitioner was inflicted with a punishment of stoppage of three increments with non-cumulative effect. Being aggrieved with the same, the petitioner preferred statutory appeal before the appellate authority, however the same was treated to be review petition and the Deputy Secretary to the Government, Labour Resources Department, Government of Bihar, Patna vide his order contained in memo no. 992 dated 02.07.2020 proceeded to rejected the appeal/review preferred by the petitioner. It appears from the record that the document which was the basis for initiation of proceeding against the petitioner i.e. the report of the flying squad was not provided to the petitioner, despite repeated request being made by him and even by filing petition under the Right to Informant Act. The same was finally provided to the petitioner on 27.12.2019 i.e. after filing of the appeal/review petition by the petitioner on 30.10.2019. The



disciplinary authority proceeded to award punishment to the petitioner on the basis of the report submitted by the flying squad and the same was not provided to the petitioner during course of enquiry or before passing the order by the disciplinary authority.

10. The Hon'ble Supreme Court of India in a case of **(State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha)**, reported in (2010) 2 SCC 772, in paragraph nos. 34, 35, 36 & 37 has held as follows:

“34. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

35. The aforesaid proposition of law has been reiterated in the case of Trilok Nath vs. Union of India 1967 SLR 759 (SC) wherein it was held that non-supply of the documents amounted to denial of reasonable opportunity. It was held as follows: "Had he decided to do so, the



document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of State of Punjab vs. Bhagat Ram (1975) 1 SCC 155: "The State contended that the respondent was not entitled to get copies of statements. The



reasoning of the State was that the respondent was given the opportunity witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination. It is unjust and unfair to deny the government servant copies of



statements of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

37. We may also notice here that the counsel for the appellant sought to argue that respondent had even failed to give reply to the show cause notice, issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3.8.2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report can not legally be termed as an enquiry report as it is a reiteration of the earlier, enquiry report. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury. In our opinion the appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition 937/2003. In terms of the aforesaid order the respondents was required to submit a reply to the charge sheet upon supply of



the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. In our opinion the actions of the enquiry officers in preparing the reports ex-parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.”

11. Considering the settled law as well as the fact that the report, which was the basis for initiation of enquiry against the petitioner was not provided to the petitioner by the disciplinary authority, before passing the final order of punishment, which denied the petitioner an opportunity to file his reply to the allegations leveled against him, since the basis of initiation of departmental proceeding was the report of the flying squad team, which found certain discrepancies/deficiencies at the centre, where the petitioner was appointed as the Centre Superintendent. In view of the above, this Court is of the opinion that the order contained in memo no.



2303 dated 26.09.2019 as well as memo no. 992 dated 02.07.2020 both issued under the signature of the Deputy Secretary to the Government, Department of Labour Resources, Government of Bihar, Patna deserves to be set aside and is accordingly set aside. The matter is remitted back to the disciplinary authority to proceed afresh from the defective stage i.e. by giving an opportunity to the petitioner to file his reply on the basis of the documents, which were the basis for initiation of departmental proceeding against the petitioner and which have been provided to the petitioner on 27.12.2019. The entire exercise in this regard must be completed within a period of six months from the date of receipts/production of a copy of the order.

12. With the aforesaid directions, this writ petition is allowed.

13. Pending application(s), if any, shall also stands disposed of.

(Ritesh Kumar, J)

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