

**In The Court of Commissioner, Saran Division, Chapra**

**Service Appeal No. 170/2017**

**Pradeep Rai**

**Vrs.**

**The state of Bihar**

**ORDER**

The instant appeal petition is directed against the impugned order as contained in memo No. 1126/Panchayat dated 28.08.12, passed by District Magistrate, Gopalganj whereby and whereunder the appellant was inflicted with the punishment of reduction to a lower time, scale of pay in the basis grade and furthermore the appellant would be entitled for only subsistence allowance for the entire period of suspension.

The brief facts of the case are that the appellant Pradeep Rai S/o Late Banke Bihari Rai, R/o vill-Baraipatti, P.S. Yadopur, Dist-Gopalganj at the relevant time was posted as panchayat Sachiv in block office, Kuchaikot of Gopalganj district. Further case is that the appellant was placed under suspension vide order contained in memo No. 2307/confi. dated 14.09.2011 for the alleged charges of violating the provision of guidelines meant for Indira Awas construction and of misuse of Government funds. Besides this, for the said allegations, deptt. proceeding was also ordered and accordingly Director, DRDA, Gopalganj was made as conducting officer and DPRO, Gopalganj as presenting officer in the said deptt. proceeding. This led to framing of charges against the appellant for aforementioned allegations. Subsequently supplementary charges were also framed and on the basis of all such charges a common deptt. proceeding against the appellant was initiated. Altogether eight charges were levelled against the appellant which were basically related to violation of various instructions contained in guidelines issued by the deptt. of Rural Development with respect to selection of beneficiaries and allocation of fund under Indira Awas Yojana Scheme and also for commission of alleged irregularities in selection of Panchat Teacher in the Kuchaikot block. The conducting officer concluded the said deptt. proceeding on 19.03.2012 in which all the charges were found proved and, the record relating to the said deptt. proceeding was sent to the disciplinary authority, the D.M. Gopalganj. The D.M. after receipt of the said inquiry report asked a second show cause from the appellant vide memo No. 591/panchayat dt. 28.04.2012. In compliance to that the appellant filed his detailed reply on 03.07.2012 denying all the charges. The D.M. Gopalganj, after considering the inquiry report and second show cause reply filed by the appellant finally imposed major punishment to the appellant.

On being aggrieved by the and dissatisfied with the said major punishment like reduction to a lower time scale of pay in the basic grade and stoppage of anything more than the substance allowance for the entire suspension period, the appellant has preferred the instant appeal under the relevant provision of Bihar Govt. servant (classification, Control and Appeal) Rules-2005.

Heard the learned counsel for the appellant and learned Govt. pleader at length.


The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the quantum of punishment imposed on the appellant is certainly more than the charges levelled against him and for which he was placed under suspension and subsequently also faced deptt. proceeding. He further argued that the appellant being a panchayat Sachiv was charged for selecting some person for grant of IAY although they were

  
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not qualified to get benefit of such scheme but this appellant was alone punished for such wrong deeds and other block staff including dealing clerk and block development officer were left out despite being the fact that this appellant was no way connected in the preparation of the list of families to be sanctioned IAY scheme strictly according to the Govt. Guidelines. The learned counsel further said that this appellant has not done anything wrong while recommending Indira Awas to some non-deserving persons but actually the said persons were selected from the list of beneficiaries prepared by the committee by making survey and grade allotted to them. He further argued that the other allegation regarding appointment of panchayat teacher was concerned, the said appointment was not done by the appellant but the said appointment was made by the committee and the appellant was just a member of that committee and his role was limited up to implementation of the decision of the committee as such the appellant has not committed any irregularity in the appointment of one Mahesh Prasad as panchayat teacher. The learned counsel further submitted that in the deptt. proceeding, the conducting officer did not consider the show cause reply filed by him but he relied heavily on the opinion of presenting officer and all the charges were reported to be proved. The learned counsel also strongly said that even the learned D.M. also did not consider the facts explained through the second show cause reply. He further said that the appellant has not caused any financial loss to Govt. by his any action but inspite of that he has been awarded major punishment resulting in heavy monetary loss to the appellant at the fag end of his service. The learned counsel further said that from all account, the quantum of punishment inflicted to the petitioner is certainly more than the gravity of the offence for which he was proceeded departmentally as such the said punishment order needs to be modified for the sake of justice. He lastly prayed that as the appellant has also been denied his full salary for the period of suspension, the impugned punishment order deserves to be modified by the appellate authority to render absolute justice to the appellant.

The learned Govt. pleader, on the other hand, strongly opposed the pleadings made by the learned counsel for the appellant and submitted that as the all the charges levelled against the appellant were found proved in the deptt. inquiry, the punishment imposed on the appellant seems to be just and proper in view of the charges of misconduct levelled against him. He further said that the impugned punishment order needs no modification rather the same be affirmed.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned punishment order, it appears that the appellant has been inflicted with some major punishment for the alleged misconduct after a duly conducted deptt. proceeding in which the inquiry officer has found proved all the charges. The main contention of the learned counsel for the appellant is that the appellant has been inflicted with major punishment like reduction to a lower stage in timing scale of pay and also of denying his full salary for the whole period of suspension undergone by him. This contention of the appellant or based on the ground that the appellant being a panchayat Sachiv was no way responsible for preparation of the list of beneficiaries rather the same was prepared by a committee and the appellant has only to grant benefits to the beneficiaries from the said list as per the instruction contained in the guidelines for IAY scheme. I find some substance in the said plea of the appellant for the reason that there is specific instruction from the Govt. for selection of beneficiaries from the local population on the basis of certain criteria and it is the BDO of the concerned block who is competent to grant final selection of IAY to a particular person after satisfying him. In fact he is no way bound to agree with the name recommended by the panchayat Sachiv. The learned counsel for the appellant while contradictory the other allegation like illegal appointment of panchayat teacher by the appellant, he categorically stated that the appellant being a member of the committee

  
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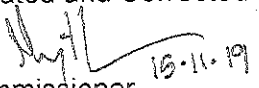
only allowed to join him on the selected post as vacancy was existing at that time as such for the said offence the appellant alone can not be held responsible. This plea of the learned counsel seems to be acceptable to some extent.

Thus, from the foregoing account, it is seen that the only point that survives for consideration at this stage is whether the punishment inflicted on the appellant commensurate with the gravity of the offence for which the delinquent was departmentally proceeded for. It is important to mention that although, it is well settled that what punishment a particular misconduct should entail is primarily the function of the employer and the same is interfered with only when the punishment is disproportionate to the gravity of allegation or to put it differently shocking and abnormal. In the instant case, it is seen that the punishment awarded to the delinquent does not commensurate with the gravity of the offence for which he was firstly placed under suspension and subsequently inflicted with major punishment. The appellant alone was not responsible for granting benefit of IAY scheme to ineligible person and for selection of panchayat teacher illegally. The fact is that the selection of beneficiaries under IAY scheme and of selection of panchayat teacher are made through a tough process in which different level of staff and officers are involved. Thus, it is wrong to say that the appellant alone was responsible for such misdeeds. What is more it also appears that no financial loss to state exchequer has been caused nor the appellant was benefited any way from his such misconduct. As such the punishment meted to the appellant is certainly does not commensurate with the gravity of the offence. In fact, it is almost settled that the penalties must be imposed for good and sufficient reasons and in the instant case it appears that this important proposition of law has not been followed by the disciplinary authority while passing the impugned punishment order against the appellant. The impugned punishment order seems to be certainly disproportionate to the gravity of the allegations levelled against the appellant. As such the impugned punishment order needs to be modified for the sake of justice.

For the aforementioned reasons, I do not find any good and sufficient reasons to uphold or affirm the said punishment order. Hence, the impugned punishment order is modified to the extent of withholding of two annual increments of pay with cumulative effect for the year 2011 & 2012 and the appellant is entitled for getting full wages for the whole period of suspension undergone by him.

Accordingly this appeal petition is allowed and the impugned punishment order of D.M. Gopalganj contained in memo No. 1126/panchayat dated 28.08.2012 is modified to the extent as mentioned above.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
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Saran Division, Chapra.