

In The Court of Commissioner, Saran Division, Chapra

Service Appeal No. 200/2015

Saurabha Kumar Singh

Vrs

The state of Bihar

ORDER

The instant appeal petition is directed against the impugned punishment order as contained in memo No. 555/Estt. dt. 29.06.2015 whereby and whereunder the appellant has been inflicted with the punishment of withholding of two increments of pay with non cumulative effect besides non-entitlement of any pay for the period of absence.

The brief facts of the case are that the appellant Saurabh Kumar Singh, at the relevant time was posted as clerk in Block office, Daraundha of Siwan district. Further case is that as the appellant remained absent from duty since 18.02.2013 without getting the leave sanctioned, the BDO, Daraundha sent a report to D.M. Siwan regarding unauthorized absence of the appellant. Acting on the said report, the D.M. Siwan vide order contained in memo No. 424/Est. dt. 01.03.2014 placed the appellant under suspension and circle office, Guthani was made as his HQ and further directed the BDO, Daraundha to frame charge memo in form-K. The BDO Daraundha in compliance to the said direction sent the form-K to D.M. Siwan vide letter No. 535 dt. 27.05.2014 and three charges were levelled against the appellant. Thereafter, the D.M. as disciplinary authority ordered for initiation of deptt. proceeding and appointed. Ramanuj Prasad Singh, SDC, Siwan as conducting officer and BDO, Daraundha as presenting officer in the said deptt. proceeding. After the completion of deptt. proceeding against the appellant, the conducting officer submitted his report to D.M. Siwan in which only charge No. 1 was found to be partially proved. Then the disciplinary authority issued second show cause notice to the appellant and the appellant accordingly submitted his reply. But the D.M. after reviewing the said second show cause reply, passed the final order of punishment like withholding of two increments of pay and no salary would be payable for the period of absence vide memo No. 551/Estt. dt. 29.06.2015. Feeling aggrieved by the said punishment order, the petitioner has preferred the instant appeal before this Court.

Heard the leaned counsel for the appellant and the learned G.P. on behalf of D.M. Siwan.

The learned counsel appearing on behalf of the appellant assailed the impugned punishment order and submitted that the same is illegal, arbitrary and unjustified because without recording any reason for the disagreement or flaw in the findings of the conducting officer of the deptt. proceeding, the punishment order has been passed. He further said that the inquiry officer in his report clearly held that the charges relating to unauthorized absence of the appellant has been proved only partially, but the learned D.M. without considering the said findings of inquiry officer in its true perspective has imposed the punishment of withholding of two increments of pay with non cumulative effect. The learned counsel further submitted that the only mistake on the part of the appellant was that he proceeded on medical leave from 18.12.2013, without getting the same duly sanctioned by the controlling officer, for the reason that he has to undergone surgery of his eyes which was become necessitated to save his vision from vanishing completely. He also said that the appellant had actually submitted the application of leave from 18.12.2013 to BDO, Daraundha and as the BDO did not take decision on the

same, he had no option left than by keeping the leave application in attendance register, he proceeded on leave thereby he has not committed any grave misconduct. The learned counsel further argued that even the inquiry officer did not hold the charge of unauthorized absence against the appellant as fully true in view of the fact that the appellant had actually satisfied the inquiry officer during conduct of deptt. proceeding through the copies of leave application and medical certificates. The learned counsel also submitted that the appellant has been inflicted with punishment of withholding of increments and non-payment of salary for the entire period of absence, thereby putting him in huge monetary loss but the fact is that the said period of absence should have been adjusted with the earned leave due to the appellant. He lastly submitted that as the impugned order of D.M. Siwan suffers from the vice of arbitrariness the same is fit to be set aside and this appeal petition be allowed.

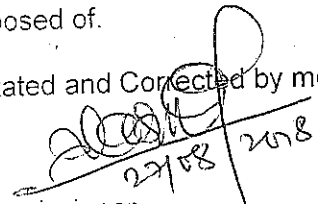
The learned Govt. pleader, on the other hand, supported the impugned order and said that the same is reasoned and has been passed after a duly conducted deptt. proceeding. As such the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned punishment order passed by D.M. Siwan, it is seen that punishment like withholding of two increments with non-cumulative effect is a minor punishment but the punishment with regard to non-entitled of pay for the entire period of absence/suspension seems to have been caused huge monetary loss to the appellant. In fact from perusal of the impugned order it is seen that the disciplinary authority has not recorded any reason as to why he is not in agreement with the findings of the inquiry officer. The claim of the learned counsel for the appellant is that in view of the partially proved charges and facts explained by the appellant in his second show cause reply, the disciplinary authority was bound to discuss the same in his final order but no such discussion have been made by the disciplinary authority. This plea of the appellants counsel seems to be acceptable for the reason that neither the reasons have been recorded from disagreement with the findings of inquiry officer nor any reasons have been assigned for rejection of the second show cause reply of the appellant. Thus, the entire punishment order becomes vitiated in law. The thrust of argument of learned counsel for the appellant is that the absence of the appellant was neither wilful nor without intimation. There were certain compelling reasons and circumstances for which the appellant could not attend his duty and he could not inform about his non reporting for duties to his controlling officer. In fact petitioner's case needs re-consideration at the level of Disciplinary authority, the D.M. so that substantial justice may be done to the appellant.

For the aforementioned reasons, the impugned order of D.M. Siwan is not sustainable and hence the same is set aside. The case is remitted back to D.M. Siwan for fresh consideration and to pass a reasoned and speaking order after considering the second show cause reply of the appellant.

With the aforementioned observations and directions, this appeal petition is disposed of.

Dictated and Corrected by me.


27/08/2018
Commissioner
Saran Division, Chapra.


27/08/2018
Commissioner
Saran Division, Chapra.