

In The Court of Commissioner, Saran Division, Chapra

1. **Service Appeal No. 174/2015**
Mahabir Manjhi Vrs D.M. Siwan.
2. **Service Appeal No. 175/2015**
Kumar Akhileshwar Nand Vrs D.M. Siwan.
3. **Service Appeal No. 179/2015**
Mahesh Chaudhary Vrs D.M. Siwan
4. **Service Appeal No. 180/2015**
Ram Awadh Bhakt Vrs D.M. Siwan.
5. **Service Appeal No. 181/2015**
Manan Kumar Shukla vrs D.M. Siwan.

ORDER

The aforementioned all these appeal petitions are directed against the impugned punishment order passed by D.M. Siwan whereby and whereunder two increments in the pay, of all the appellants have been withheld with non cumulative effect.

All these appeal petitioners have been heard together and are being disposed of with the common order as per the prayer made by the learned counsel for the appellants.

The brief facts of the case are that all the five appellants namely Mahavir Manjhi, Kumar Akhileshwar Nand, Mahesh Chaudhary, Ram Awadh Bhakt and Manan Kumar Shukla are revenue karmachari and at the relevant time were posted in the Daraundha circle of Siwan district. Further case is that a common show cause notice vide memo No. 58 dt. 11.01.2014 was issued to all the appellants by D.M. Siwan for their failure to comply with the earlier directive given to them to dispose of two encroachment case in their respective Halkas. The appellants filed their show cause reply before D.C.L.R. Maharajganj who in turn on finding the said show cause replies to be satisfactory recommended for acceptance of the same and to discharge the appellants from the said charges. However, the learned D.M. Siwan acting on the said recommendation took a contrary view and held the appellants as responsible for deliberately failed to discharge their responsibilities and duties and accordingly, punishment of withholding of two annual increment with non-cumulative effect were passed against them. Feeling aggrieved by the said punishment orders all the appellants preferred their separate appeal petitions before this Court. As in all the appeals identical issue of facts and similar punishment are involved, the said appeal cases have been heard together and being disposed of by a common order.

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

The learned counsel, appearing for all the five appellants, submitted in detail about the course of events leading to passing of the impugned punishment order and also argued that the same is illegal and improper in view of the facts and circumstances of the case. He further argued that the directions given to the C.O. that each Revenue Karmchari would made inquiry of two encroachment case of their respective Halka and they would also file case and action taken report to be sent which would be discussed in the next meeting. He further submitted that no such information was passed to the concerned revenue karmchari and in absence of any information, they did not follow the said direction. He also argued that for this alleged lapse on the part of the appellants they were served with a show cause notice. The

appellants filed their show cause reply stating the whole facts and thereafter, the learned DCLR sent his recommendation for exonerating the appellants from the said charge. The learned counsel further stated that, despite the favourable recommendation of DCLR, the learned D.M. inflicted the punishment of withholding of two increments to the appellants, which is illegal and unjustified. He further argued that in the instant case, the appellants have been punished without any fault on their part as such the impugned punishment orders are fit to be set aside failing which the appellant would suffer monetary loss. The learned counsel also submitted that various documentary evidence available on records also proves that the appellants were not informed of the said direction and as such they can not be held responsible for the said lapses and for that they should not have been punished. He lastly prayed that the impugned punishment orders, passed by D.M. Siwan be set aside and these appeals be allowed.

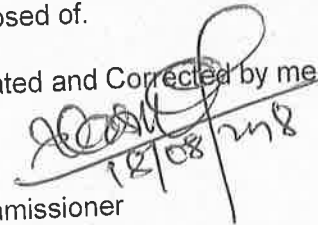
The learned Govt. pleader, on the other hand while supporting the impugned orders, submitted that the appellants have been inflicted with minor punishment of withholding of two increment for their misconduct. The said orders are fit to be upheld.

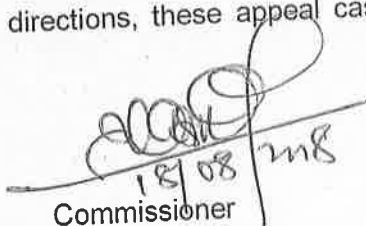
Considering the facts and circumstances of the case, material available on records pleadings forwarded by the learned counsel for the parties and on perusal of the impugned punishment order passed by the D.M. Siwan, it is seen that the appellants are inflicted with minor punishment of withholding of two increments in pay scale for alleged charges of non-complying with the directions of the authorities. The plea of the appellants are that as they were unaware of any directive from the authorities, they could not take action in the matter. In support of their said contention they heavily relied on the favourable recommendation made by concerned DCLR through whom the appellants submitted their show cause reply for the said allegations. I find some merit in the said claim of the appellants. In fact it appears that the appellants have been punished for the charges having no evidence in record to support the same. The punishment order passed by the disciplinary authority has severe civil consequences as such it should have been based on some solid evidence. As the DCLR had made favourable recommendations after satisfying himself with the show cause replies of the appellants. In that situation the disciplinary authority had no reasons to disagree with the same and subsequently inflicting punishment for the non-specific charges. If the disciplinary authority had any reason for disagreement, authority concerned ought to have recorded the reasons for that. In the instant case dispute basically relates to the fact as to whether the show cause notice has been served on the delinquents or not and secondly whether the delinquents have submitted their replies thereto or not. Obviously, these facts have not been considered properly from the material facts available in the record. It is highly improbable to think that all the five delinquents would not file their replies to the show cause notice issued to them for the alleged lapses on their part. As such these facts need to be examined thoroughly with the records to arrive at the final findings of fact. It is seen that these facts have not been considered properly at the level of disciplinary authority and for that reason the impugned punishment orders became vitiated in law.

For the aforementioned reasons, the impugned order passed by D.M. in all the aforementioned cases are not sustainable and hence the same are set aside. The cases are remitted back to D.M. Siwan for fresh consideration and to pass reasoned and speaking order in all the cases after verifying the claim of the delinquents as stated to have been mentioned in their show cause replies.

With the aforementioned observations and directions, these appeal cases are disposed of.

Dictated and Corrected by me


12/08/2018
Commissioner
Saran Division, Chapra.


18/08/2018
Commissioner
Saran Division, Chapra.