

In The Court of Commissioner, Saran Division, Chapra

Service Appeal No. 26-54/2010

Jai Prakash Singh

Vrs

D.M. Saran

ORDER

The instant appeal petition is directed against the impugned punishment order as contained in memo No. 1420 dt. 26.04.2011 issued under the signature of D.M. Saran whereby and whereunder the appellant was inflicted with certain punishment.

The brief facts of the case are that Jai Prakash Singh, panchayat Sachiv at the relevant time was posted in Mashrakh block after being transferred from the Rivilganj block. Further case is that as the appellant did not comply with the transfer order as per the direction contained in the said order firstly he was placed under suspension and subsequently deptt. proceeding was ordered against him vide memo No. 1098 dt. 20.06.2010. SDO, Marhaurah was named as conducting officer and BDO, Rivilganj as presenting officer in the said deptt. proceeding. Altogether seven charges were framed against the appellant. The conducting officer after completion of the said deptt. proceeding submitted his report vide letter No. 677 dt. 31.01.2011 to the disciplinary authority, the D.M. Saran. Thereafter, the D.M. after considering the said inquiry report finally passed the punishment order vide memo No. 1420 dt. 26.04.2011. Following punishments were given to the appellant.

1. Withholding of two annual increment in the pay scale with cumulative effect.
2. Nothing would be payable other than the subsistence allowance for the entire period of suspension.
3. Suspension period would not be counted as pensionary service.

On being aggrieved by and dissatisfied with the aforesaid punishments, the appellant preferred an appeal before the appellate Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant, at the very outset of his argument, submitted that the entire punishment given to the appellant is arbitrary, illegal and against the natural justice. He further submitted that it was not in dispute that the petitioner was not joined the new place of posting but the fact is that whatever delay caused in joining was basically due to the fact that he was not relieved by the concerned BDO, who happens to be his controlling officer and petitioner being a non-gazetted employee can not dare to move for new place of posting until he is duly relieved. The learned counsel further argued that all the charges of misconduct levelled against the petitioner was not proved in the deptt. proceeding despite he has been meted major punishment which is legally not sustainable. He further said that even no second show cause was issued to the appellant on the proposed punishment by the D.M. Saran which was necessary for the appellant to furnish his effective reply. He also argued that neither any witnesses were examined nor the appellant was given any opportunity to defend himself before passing of impugned punishment order. The learned counsel further argued that as the appellant was forced to remained in leave due to his serious ailment and for that he filed leave application alongwith medical prescriptions of treatment of doctors under whom he received in treatment but these facts were not taken into consideration either by the conducting officer of

the deptt. inquiry or by the disciplinary authority, the D.M. while inflicting the above punishments. He lastly said that as the quantum of punishment for the alleged offence is much more than the gravity of the offence, the impugned punishment order need to be set aside or modified.

The learned Govt. pleader appearing on behalf of the D.M. Saran while opposing the arguments forwarded by the learned counsel for the appellant, submitted that out of seven charges framed against the appellants, five charges were proved by the inquiry officer in his report and it was due to that the appellant has been awarded the punishment. He further submitted that the said punishment order has been passed after a duly conducted deptt. proceeding and there is no procedural error in conducting the said proceeding as such no interference is required from this Court.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order it is seen that the appellant has been awarded with certain punishments for the alleged charges of not joining on the new place of posting despite being given clear direction. The contention of the appellant is that as he was not relieved by BDO, Rivilganj, he could not join at the new place of posting. His other contention is that he has been meted with severe punishment for non-serious offence and even no second show cause notice was issued to him with regard to proposed punishment by the disciplinary authority. In fact, this claim regarding non-issuance of second show cause notice to the appellant before considering of punishment seems to be correct as nothing is available on the record to show otherwise. Thus, it appears that required procedure has not been followed by the disciplinary authority before awarding of major punishment like withholding of two annual increments with cumulative effect to the appellant. This shows that the appellant has been denied with the reasonable opportunity to formulate his defence for the charges for which proceeding has already been completed and punishment was under contemplation at the level of disciplinary authority. Thus, it is quite apparent that the requirement of natural justice has also not been complied with in the instant case. In view of the said glaring mistake at the level of disciplinary authority, the entire punishment order becomes vitiated in law and hence the same can not be upheld.

For the aforementioned reasons, the impugned order is set aside and the case is remitted back to D.M. Saran for passing a fresh order after complying with the provision of issuance of second show cause notice to the delinquent employee required to be issued prior to imposition of any major punishment as required under the law.

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

Dictated and Corrected by me.


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Commissioner
Saran Division, Chapra.


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Commissioner
Saran Division, Chapra.