

In The Court of Commissioner, Saran Division, Chapra
Service Appeal No. 26-27/2010

Lal Bahadur Ram

Vrs.

The State of Bihar.

ORDER

The instant appeal is directed against the impugned order of District Magistrate, Siwan as contained in Memo No. 11/Est. dated 04.12.2009 whereby and whereunder the punishment of withholding of one annual increment was imposed upon the appellant.

The brief facts of the case are that the appellant at the relevant time was posted as Head Clerk, in the general section of Siwan Collecteriate. The further case is that one Rajesh Kumar Pandey R/o Village- Tepaha Bazar, Ziradei made written complaint in the "Lok Shikayat cell-cum Janta Darbar" of Collector, Siwan alleging various irregularities committed by the appellant and also of demanding Rs. 2000/- as bribe for issuing licence related to display of video under rule 14 of Bihar Cinema Regulation Act- 1974. Thereafter, on the order of the Collector, statement of the complaint was recorded by the incharge of General Section and EDC, wherein it was revealed that the appellant had also misplaced the concerned file. Subsequently it was also found that the appellant had also not placed the file relating to upahar cinema Hall, of Mairwa for necessary order before the authority due to his personal interest. Then the appellant was placed under suspension for his alleged misdeeds by D.M., Siwan vide order dated 30.10.2006 and a deptt. proceeding against him was also ordered and SDO, Maharajganj was made the conducting officer. Meanwhile, the appellant's suspension was revoked on 14.01.2008 and he was transferred to Hasanpura block office. The SDO, Maharajganj submitted his enquiry report vide letter No. 914 dated 03.09.2009 to the disciplinary authority who after reviewing the said report inflicted the above punishment to the appellant.

On being aggrieved by and dissatisfied with the aforesaid punishment order, the appellant has preferred this appeal.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted that although the enquiry officer submitted his report on 18.04.2008 with finding that non-of the charge against the appellant were proved despite this, re-enquiry was ordered by the D.M. at the time of ordering re-enquiry no reasons were cited by the D.M. The learned counsel further argued that in the case no second show cause notice was issued to the appellant before passing the punishment order by the D.M. and on this lapse alone, the impugned order is fit to be set aside. He also argued that even the deptt. proceeding was not conducted as per rule. He also drew the attention of the court towards the various documents relating to deptt. proceeding against the appellant, obtained by him through RTI Act and he also stated that those documents categorically show that no second show cause notice has been



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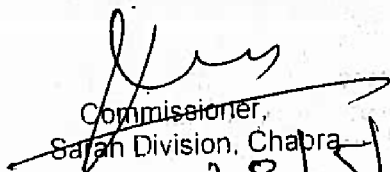
issued to the delinquent before punishing him. He further pleaded that once the enquiry against the appellant was completed than what was the reason for ordering re enquiry into the same matter without quoting any justifiable reasons and even no fresh evidence was brought into in the second enquiry. The learned counsel lastly prayed that since the impugned order is arbitrary and against the settled principle of natural justice the several may be set aside in the interest of justice.

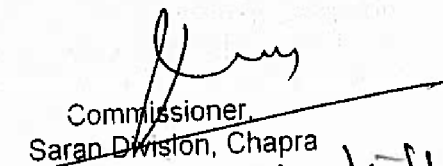
The learned Govt. pleader appearing on behalf of the respondent D.M. Siwan, on the other hand, argued that the allegations against the appellant was found true in the depts. proceeding as reported by the conducting officer and it was on that basis the punishment order was passed by D.M. The impugned order is just, proper and legal, hence there is no scope of any interference.

Considering the facts and circumstances of the case, material on record and on going through the pleadings advanced by the learned counsel for the parties, it appears that the alleged charges of misconduct against the appellant was found to be true the depts. enquiry to for it relates to non-placement of the fine relating to uphar cinema Hall resulting in non-compliance of the earlier order of D.M. whereas other charges of illegal gratification was not proved at all. From the enquiry report of the conducting officer it is also seen that the appellant was already punished by D.M. for the said lapse on the report of Addl. Collector by way of inflicting him with the punishment of "strict warning" and said punishment was to be recorded in his service book. The learned counsel for the appellant is correct in saying that once the delinquent employee was punished earlier by the disciplinary authority for the alleged charges, then certainly there was no occasion for punishing him again differently and even without issuing any second show cause notice to him. This clearly shows that although, the enquiry officer did not prove the charges against the appellant, despite the appellant has been meted punishment of withholding of one annual increment with cumulative effect for the same charge for which he was already punished and that too without recording any reason for the disagreement from the said enquiry report and also not recording of any substantial reasons for awarding such punishment. Thus, there is apparent law in the impugned order.

For the aforesaid reasons, I am constrained to uphold the impugned order of D.M. Siwan. Hence, the same is set aside and this appeal is allowed.

Dictated & Corrected by me


Commissioner,
Saran Division, Chapra
19/5/14


Commissioner,
Saran Division, Chapra
19/5/14