

In The Court of Commissioner, Saran Division, Chapra
Service Appeal No. 39/2013
Rabindra Kumar Singh
Vrs.

The State of Bihar.

ORDER

03.05.2014.

The instant appeal is directed against the impugned order passed by the District Magistrate, Gopalganj, as contained in memo No. 244/estt. dated 17.03.2010 whereby and where under the appellant was inflicted with certain punishment.

The brief facts of the case are that the appellant Rabindra Kumar Singh at the relevant time was posted as Head Clerk in the office of District Welfare Section in the District Gopalganj. Further case is that when this appellant was transferred from District Welfare Office to Fulwariya block office in the same capacity and joined his new place in the month of July 2008, the D.M. Gopalganj ordered for placing a file relating to some important issue and as the said file could not be produced before him by the office of DPO, the petitioner was held responsible for that. Accordingly, the D.M. Gopalganj ordered for withholding of salary of the appellant for his alleged failure to place the concerned file before D.M. which was necessitated for passing the final order in a case relating to alleged irregularities committed in the selection of Aanganbari Sevika at a Aanganbari Centre in Bhorey Block. Thereafter, charges were framed and DCLR Hathua was appointed as conducting officer in the said departmental proceeding against the appellant. The appellant filed his reply for the charges levelled against him stating therein that the file No. VI/6/2008 relating to starred question of Hon'ble member Bihar Legislative Council, Sri. Sunil Singh in which already replies sent to the Welfare Depptt. and the matter has since been disposed of and the concerned letter of the Hon'ble member as well as the replies there to is made available in concerned case record in the office of D.M. But the said original file could not be traced out in the office. The enquiry officer on not being satisfied with the said show cause reply held the appellant responsible for the misplacement of the file and accordingly sent a report to the D.M. Subsequently, the D.M. acting on the said report of enquiry officer passed the order of punishment like:-

1. permanent withholding of increment with cumulative effect
2. Not to be posted as Head Clerk and Nazir in any office.
3. Debarred from promotion in entire service period.

Feeling aggrieved by the said punishment order, the petitioner moved before Hon'ble High Court vide CWJC No. 218/2013 for seeking relief but the Hon'ble High Court on finding that the impugned order of D.M. is amenable in appeal dismissed the case. This led to filing of this appeal before this court.

Heard the parties

The learned counsel appearing on behalf of the appellant submitted in detail as to how this appellant was imposed severe punishment for a minor mistake of his failure in locating a file. He further pointed out that the petitioner was posted as Head Assistant in the office of District Welfare

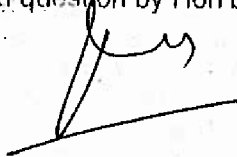


2.

Dept. from may 2005 to June 2008 and thereafter, he was transferred to Fulwariya block and he joined there in the month of July 2008 after handing over entire charge to his successor. Thereafter, the D.M. Gopalganj sought a file from the office of DPO and when the concerned file was not placed before him by the office, the responsibility was fixed upon the petitioner and a deptt proceeding was ordered against him. The petitioner filed his show cause reply before conducting officer specifically stating therein that a file related to the selection at an Aanganbari Centre was misplaced and a copy of the said file was attached with a record of the case pending before the D.M. But the said show cause reply was not accepted by the conducting officer and a report was sent to the D.M. who in turn asked second show cause from the petitioner vide memo No. 1009 dated 9.10.2009 to which the petitioner also replied on 9.11.2009 but instead of considering the same, impugned order has been passed. The learned counsel further submitted that during departmental proceeding no substantial evidence has been produced by the presenting officer in support of the allegation in spite of that without considering the second show cause reply, the punishment order has been passed which is wrong and illegal as the same has been passed without applying judicial mind. The learned counsel further argued that the main file in respect of the selection of the Sevika was attached with Aanganbari Case No. 17/2011 which was pending for disposal before D.M. Gopalganj and after perusal of the main record the case was disposed of against that an Appeal was also filed before this court vide Aanganbari Appeal No. 190/2011. The learned counsel further arguing the case submitted that altogether three charges were levelled against him to which the petitioner replied satisfactorily but the said replies were not considered at all. He also pleaded that the petitioner was not charged for causing any financial loss to the Govt. and not even scuttled the selection of Sevika rather he was held responsible for misplacement of the file relating to starred question of Hon'ble member for which replies were already sent to the deptt. and main record was tied with the pending case before D.M. Thus the petitioner could not have been held guilty as he had no mala fide intention in dislocation of the concerned file. The learned counsel also pointed out that since the petitioner has superannuated on 28.02.2014, he should not be allowed to suffer financially as no retrial dues have been cleared so far. The learned counsel lastly prayed that of the three punishment meted to the appellant, the two punishments relating to his posting as Head Assistant and ban on further promotion have become infructuous as the appellant has already retired from Service on 28.02.2014. It is due to withholding of increment with cumulative effect the appellant has been put under heavy financial loss for a minor mistake. As such this impugned order of D.M. be set aside and this appeal be allowed.

The learned Govt. pleader appearing on behalf of the respondent submitted that the impugned order of D.M. is just and proper having no infirmity, hence this appeal be dismissed.

Considering the facts circumstances of the case, pleadings advanced by the learned counsel for the appellant and on going through the memo of appeal petition, written statement, Enquiry reports and the impugned order, it is seen that the appellant was charged for dislocation/non - production of a file relating to a starred question by Hon'ble member of Bihar



3.

Legislative Council with respect to selection of Aanganbari Sevika at Centre No. 169 in Bhorey Block. The appellant's in his show cause reply before the enquiry officer stated that the replies to the starred question had already been sent to the Welfare deptt. and photo copies of that has already been sent to the D.M.'s office. He further stated that although he handed over the charge of the concerned file to his successor after his transfer from the DPO's office, the said file might have been misplaced from there. The enquiry officer taken this statement of the delinquent against him and accordingly sent a report to the D.M. The learned D.M. acting on the said enquiry report and completely ignoring the second show cause reply of the appellant imposed major punishment to the appellant. It is also seen that the appellant has stated in his second show cause reply that the said file was tagged with a case record of Aanganbari Case No. 17/2011, which was pending before D.M., but this important fact was also not taken seriously by the D.M. and punishment order was passed. In my view a reasonable explanation offered must be reasonably accepted unless there are cogent materials to reject the same. But here in this case I find that the learned D.M. did not bother to go into bottom of the incident of misplacement of file and without making any fact finding enquiry in the matter simply held the appellant as guilty and accordingly meted sever punishment. I also find that the petitioner was not charged for making any financial loss to the Govt. rather he was held only responsible for non-production of the concerned file. Thus, the punishment meted to the appellant seems to be more severe than the gravity of his offence. It is also seen that the file has not been lost completely from the office of DPO but the same was available in the office of D.M. alongwith a case record relating to Aanganbari Case. This itself shows that the petitioner had no malafide intention of dislocating the concerned file. Whatever inconvenience might have been caused to the D.M. when the said file was not made available to him when he called for that is not a serious offence on the part of petitioner who was not even posted in the office of DPO, Gopalganj, at the relevant time.

For the aforementioned reasons, I am constrained to uphold the impugned order of D.M. Gopalganj, accordingly the same is set aside and this appeal is allowed. Furthermore, since the appellant has already superannuated on 28.02.2014, steps must be taken for payment of his post retiral benefits expeditiously so as to avoid any further litigation.
Dictated & Corrected by me.

Commissioner,
Saran Division, Champra

3/5/2014

Commissioner,
Saran Division, Champra

3/5/2014