

In The Court of Commissioner, Saran Division, Chapra
Service Appeal No. 221/2013

Gyanchand Ram

Vrs.

D.M. Siwan

ORDER

13.03.2015 The instant appeal is directed against the impugned order of punishment passed by D.M. Siwan as contained in memo No. 905/Estl. dt. 24.06.2013.

The brief facts of the case are the appellant Gyanchand Ram was posted at the relevant time, as incharge Head clerk in the Circle Office, Hussainganj of Siwan District. The further case is that in view of certain reported allegations against the appellant in respect of some irregularities like three months delay in making the final payment of provident fund amount of one retired chaukidar Bishwanath Manjhi, wrongful making payment to two revenue Karmcharis for the period of which their pay was stopped, issuance of wrong utilization certificate of the allotment received under flood relief head (2007-08) without drawing any amount from that head. On the basis of these allegations charges were framed and accordingly deptt. Proceeding was ordered by D.M. Siwan and Addl. Collector, Deptt. enquiry, Siwan was made the conducting officer. The conducting officer after concluding the enquiry submitted his report to the disciplinary authority, the D.M. Siwan who in turn acting on the said enquiry report passed the punishment order vide memo No. 905/Estl. dt. 24.06.13 in which the appellant was inflicted with the punishment of censure and with holding of one increment of pay with cumulative effect and these punishments were to be entered in the service book of the appellant.

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

Heard the parties.

The learned senior counsel appearing on behalf of the appellant submitted that the order passed by the Collector is not sustainable both on facts and law as he neither considered the show cause submitted by the appellant nor has assigned any reason for not accepting the show cause filed by the appellant. He further submitted that no witness was examined by the enquiry officer in presence of the appellant and no opportunity of cross examination of the witnesses was given to the appellant. The learned counsel further pleaded that sub-rule (2) and (3) of Rule-18 of Bihar CCA Rules-2005 clearly says that the disciplinary authority after receipt of the enquiry report, disagrees with the finding of the enquiry officer, records reasons for such disagreement and shall forward the enquiry together with findings to the delinquent employee, in order to substantiate this plea, the learned counsel heavily relied on some of the reported



Judgments of Hon"ble High Court (2013 (2) PLJR-page 605 and of Hon"ble Apex Court (2013 (2) PLJR (S.C) page No. 25). The learned counsel lastly prayed that the impugned order be set aside and this appeal is fit to be allowed.


The learned Govt. Pleader appearing on behalf of D.M. Siwan strongly supported the impugned order and further submitted that punishment is the discretion of the disciplinary authority and now there is no requirement of asking second show cause from the delinquent employee before awarding of punishment so the impugned order is cogent, reasoned having no illegality.

Considering the facts and circumstances of the case, material available on records and on going through the impugned order and written arguments submitted by the learned counsel for the appellant, it is quite apparent that the deptt. enquiry against the delinquent for the alleged charges has been conducted as per the provision of Bihar CCA Rules-2005. However, the petitioner counsel contends that the petitioner was not served with the second show cause notice before awarding of punishment which is the mandatory requirement to be followed by the disciplinary authority as per the provision contained in Bihar C.C.A. Rules-2005. But the learned G.P. on the other hand, is of firm view that serving of second show cause notice is no longer required in deptt. proceedings. It is almost well settled now that issuance of a second show cause to the delinquent employee to determine the quantum of punishment is not mandatory and as such on this ground alone, the punishment order can not be assailed. Although, the learned counsel relied upon certain rulings but the same does not have any applicability in the fact situation of this case.

Thus, for the aforesaid reasons, I do not find any reason to interfere with the impugned order of D.M. Siwan contained in memo No. 905/Estt. dt. 24.06.13; hence the same is upheld and in the result this appeal is dismissed.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra

 B.3.15
Commissioner,
Saran Division, Chapra

Memo No. Date

Order Passed on 13/3/15 Forwarded to The

D/O, Siwan

For information and necessary action and for
Communication to all Concerned


Secy To Commissioner
Saran Div Chapra

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