

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHAPRA

Service Appeal No. 101/2013

Nagina Sah

Vrs.

The State of Bihar & Ors.

ORDER

28.02.15

The instant appeal is directed against the impugned order passed by District Magistrate, Saran as contained in Memo No. 156/सा० dated 16.02.2013 whereby and whereunder the appellant was inflicted with certain punishment.

The brief facts of the case are that Nagina Sah was, at the relevant time, posted as chowkidar in Ekma circle office when he was made a named accused in Ekma, P.S. – Case No. 68/2011 resulting in his suspension vide Memo No. 48/क० dated 16.01.2012 for his absence from duty from July 2011 to October 2011 and also deptt. proceeding initiated against him. Thereafter, the appellant moved before Hon'ble High Court by filing CWJC No. 9548/2012 challenging the suspension which was subsequently revoked by the Hon'ble High Court vide order dated 09.07.2012. The conducting officer after concluding the deptt. proceeding submitted his report vide letter No. 1585/panchayat dated 30.10.2012 leading to imposition of following punishment by the disciplinary authority the D.M., Saran.

1. Withholding of two annual increment with non-cumulative effect.
2. No work no pay would apply for the period of absence and no salary will be paid.
3. Period of absence would not be counted as pensionary service.
4. Nothing would be payable for the period of suspension besides subsistence allowance but the suspension period would be counted as pensionary service.

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

Heard the parties.



D/O, Saran

The learned counsel appearing on behalf of the appellant submitted that the impugned order has been passed without giving any reasonable opportunity to the appellant. He further submitted that initially even subsistence allowance was not paid to the appellant and the same was paid after the suspension order was revoked by the Hon'ble High Court. He also argued that sever punishment has been imposed on the appellant as such the impugned punishment order needs to be set aside since the appellant has retired from service.


The learned Govt. pleader, on the other hand, submitted that all the punishments falls under category of minor punishment and the same has been awarded after a duly conducted Deptt. Proceeding.


Considering the facts and circumstances of the case, material available on records, and on going through the arguments forwarded by the learned counsel for the appellant, it is seen that the appellant has been awarded with excessive punishment which is not commensurate with the gravity of offence for which he was charged. The main charge against the appellant is that he remained absent from his duty from July 2011 to Oct. 2011. This charge can in no way be treated as serious enough to attract the quantum of punishment inflicted upon the appellant in this case. It is also surprising as to how the conducting officer was competent to suggest to the disciplinary authority about the quantum of punishment to be inflicted on the delinquent.

For the aforesaid reasons, the impugned order of D.M. Saran is not sustainable in whole as contained in Memo No. 156/सा० dated 16.02.2013 as such the same is modified to the extent that in place of withholding of two increments one increment with non-cumulative effect will remain and period of absence will be adjusted with leave due and punishment no. 3 and 4 are set aside meaning thereby that full salary shall be payable for the period under suspension.

This appeal petition is allowed to the extent as mentioned above.

Dictated and corrected by me.


Commissioner,
Saran Division, Chapra


28.2.15
Commissioner,
Saran Division, Chapra