

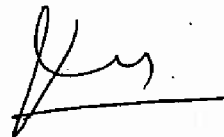
In The Court of Commissioner, Saran Division, Chapra
Service Appeal No. 74/2012
Anil Kumar
Vrs.
Collector, Saran
ORDER

The instant appeal directed against the impugned order passed by the Collector, Saran, as contained in memo No. 38 dated 09.01.2012 whereby and where under the appellant was inflicted some punishment.

The brief of the case are that the appellant Anil Kumar a Revenue Karmachari, was posted in the Ekma circle of the Saran District and was incharge of Halka No. 04 at the relevant time. The further case is that a camp was organised in 18.01.2005 in the said circle for the disposal of mutation cases. It is further alleged that the said Revenue Karmachari placed altogether 16 records for consideration instead of only 14 cases which were received by him prior to 18.01.2008 thereby holding him for adding two more cases. When this was detected, he was placed under suspension vide order contained in memo No. 241/Est. dated 24.03.2009 and subsequently charge sheet was framed and departmental enquiry was ordered by D.M., Saran vide memo No. 458/est dated 15.03.2010. The said deptt. enquiry was conducted by DCLR, Marhaura and who after concluding the said enquiry submitted his report on 12.04.2011 to the Disciplinary Authority, the D.M., Saran, But the D.M., Saran instead of agreeing with the said enquiry report, ordered for a re-enquiry and this time District Transport Officer, Saran was made the conducting officer, vide memo No. 825 dated 17.05.2011. The DTO, Saran, submitted his report vide memo No. 1097 dated 16.09.2011 wherein the appellant was absolved of the second and third charges and was held only partially responsible for addition of two more records in the camp. Thereafter, a second show cause was asked from the appellant but the appellant filed his reply wherein he denied of all the charges. But the D.M. vide order dated 09.01.2012 imposed the following punishment on the appellant that no full salary will be paid for the entire period of suspension besides subsistence allowance, suspension period will not be counted for the total length of service and withholding of one annual increment of pay with cumulative effect.

On being aggrieved by and dissatisfied with the said punishment order, the appellant has preferred this appeal petition before this court.

Heard the parties.

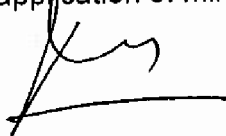


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The learned senior counsel appearing on behalf of the appellant submitted that although, the conducting officer, absolved the appellant from charge No. 2 and 3 and held that not only the appellant alone rather the C.I. and C.O. were equally responsible for charge No. 1 and the learned Collector without hearing the appellant passed the impugned order which is assailable. He further stated that the impugned order is not a speaking order so far as it is not clear as to what were the charges against the appellant, what were defence of the delinquent and what were the reasons for not accepting the defence of the delinquent and in support of his averments he also heavily relied upon the reported decisions of Hon'ble High court, as reported in 2013 (2) PLJR, page No. 416 and 605, 2005 (3) PLJR, page No. 609. The learned counsel further submitted that from the impugned order it is quite apparent that the Collector has only mentioned that charges were framed, inquiry was conducted and explanation submitted was not satisfactory and the impugned order was passed mechanically. The learned counsel lastly submitted that in view of the apparent defects in the impugned order, the same is fit to be set aside.

The learned Govt. pleader, appearing on behalf of the Collector, Saran, on the other hand, submitted that the impugned order is just, proper and valid and requires no interference at all.

Considering the facts and circumstance of the case, argument advanced by the learned counsel for the appellant and on going through the two enquiry reports of the conducting officers, it is seen that in both the enquiry reports one common finding in respect of first charge against the appellant is that he alone is not responsible for the alleged misdeeds but his other superior like C.I. and C.O. are also responsible for the same. But it appears that they have not been prosecuted or punished for the said misdeeds so far and this appellant has alone been punished. It is assumed that it may be the intention of the appellant to add two more documents for consideration in the camp then why not the C.I. and C.O. detected the same as such the inquiry officer were correct in his finding that this appellant alone is not responsible. This is sufficient to believe that this appellant has been only meted punishment. The learned counsel is correct in saying that the impugned order of Collector is not a speaking order as he has not discussed the reasons for his disagreement from the second enquiry report wherein the appellant was absolved of the two other charges completely and was held guilty only partially for the first charge. The learned counsel also referred various reported decisions in support of his contention that an order in which the reply to a show cause notice has not been considered, the said order becomes a mechanical order and supposed to be passed without application of mind and such kind of



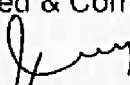
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order is fit to be set aside. In my considered opinion , the impugned order of Collector, is certainly suffers from the lack of reasoning as it does not disclose the reasons as to how and why he differs from the said enquiry report and why the second show cause reply filed by the appellant was not worthy of consideration. I also find that in this particular case, the delinquent was awarded harsh punishment which does not commensurate with the gravity of his alleged offence and that too without assigning any reasons for awarding such a grave punishment.

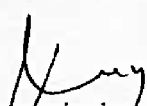
Thus , for the reason aforesaid the impugned order of Collector , Saran, as contained in memo No. 38 dated 09.01.2012 is not sustainable, hence the same is set aside. However , Keeping in view the offence alleged to have committed by the appellant and for that charge No. 1 was framed against him, the punishment of withholding of one annual increment with cumulative effect supposed to be serious in view of the offence. As such the same is modified to the extent of non-cumulative effect. The rest punishments as contained in memo No. 38 dated 09.01.2012 of D.M. , Saran is set aside.

With above modification, this appeal is allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra

29.3.14


Commissioner,
Saran Division, Chapra

29.3.14