

**In The Court of Commissioner, Saran Division, Chapra  
Service Appeal No. 97/2012  
Subodh Narayan Jha  
Vrs.  
The State of Bihar & others**

**ORDER**

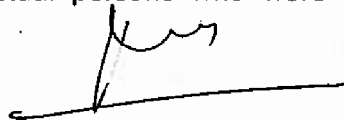
The instant appeal petition is directed against the impugned order of District Magistrate, Gopalganj as contained in memo No.321/panchayat dt. 21.02.2012 whereby and whereunder the appellant was inflicted with punishment of withholding of one increment with non cumulative effect for the alleged charge of delay caused by him in placing the file No. xiii-79/2009-10-2001 of PACCS Election 2009.

The brief facts of the case are that the appellant Subodh Narayan Jha, S/o Anant Lal Jha R/o Vill-Madhuban, P.S-Kanti, Dist-Muzaffarpur, at present posted as Assistant in District election office of Gopalganj. Further case is that while he was posted in the same capacity in the District Panchayat office, he was the custodian of the file relating to printing of ballot papers for the PACCS Election-2009. As he failed to place the file in time, causing delay, for which an explanation was sought from him vide memo No. 1289 dt. 29.12.2010 to which he furnished his reply on 31.12.2010 refuting the charges levelled against him for the delay caused at his level in placing the file. However, the D.M. on not being satisfied with the said show cause reply imposed punishment by withholding one increment of pay with non-cumulative effect vide memo No. 321/Panchayat dt. 21.02.2012.

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

Heard the parties.

The learned counsel for the appellant submitted that the punishment imposed on the appellant is not sustainable in view of the fact that the said show cause notice issued to the appellant for his said noting dt. 06.10.2010 in the concerned file was not written by him because on that day he was not posted in Panchayat office rather he was posted in the Election office. This fact, although, explained by the petitioner in his show cause reply, but the same was not taken seriously by the D.M. while imposing punishment on the appellant. The learned counsel further submitted in details about the whole course of events leading to inflicting of punishment to the appellant and finally contended that the period of alleged delay as mentioned 06.10.2010 at that time Sri Kailashpati Prasad and Jai Prakash Viyarthi were posted as Head Clerk and incharge clerk in the Panchayat office and it was they who should have been held responsible for causing delay in placing the file. But this appellant has been made scapegoat in order to save the others. The learned counsel further submitted that on perusal of the file noting of different dates at different levels clearly shows that this appellant has not delayed the file rather the actual persons who were responsible for




causing delay were not identified due to misleading notings made by the concerned staffs when the D.M. ordered for identifying the persons responsible for causing the delay. The learned counsel lastly said that the appellant has been imposed punishment without making any inquiry or conducting departmental proceeding hence the impugned order is illegal and fit to be set aside.


The learned Govt. Pleader on the other hand submitted that there is no need of conducting departmental proceeding for ordering minor punishment as such the impugned order is proper having no illegality.

Considering the facts and circumstance of the case and on going through the photocopies of the concerned file as made available by the appellant's counsel and on perusal of the statement of facts sent by D.M. Gopalgarj, it is seen that it is not in dispute that the appellant was posted in the Panchayat office at the relevant time and was the custodian of the concerned file. It is seen from the file noting that the appellant recorded his note in the said file on 23.10.2009 and thereafter notings of other officers are seen. It is also seen that the D.M. by his order dt. 01.11.2010 questioned the delay by noting "why this much delay" and for answer to that the District Account Officer wrote that on 06.11.10 as the staffs of Panchayat office were deputed in the different cells made for Assembly election 2010, that was the reason for the delay and this is pardonable. Thus from the said notings of the DAO, it is quite obvious that this appellant was not responsible for the delay in placing file rather the whole staffs of panchayat office were responsible and the said delay was caused due to engagement of staffs in other important matter. In such a situation a through enquiry was needed in the matter and responsibility should have been fixed on the outcome of the said enquiry. But in the instant case, the appellant has been solely held responsible for the delay without making any fact finding enquiry in the matter and punishment was imposed on him without discussing the reason as to how the appellant held to be responsible for the delay in placing the file without making any enquiry into the matter. Thus it appear that the action against the appellant has been decided mainly on the point that he was the custodian of the file and such kind of punishment without making any preliminary enquiry into the alleged charges, is not maintainable as it violates the principle of natural justice.

Thus, for the aforesaid reasons, the impugned order of D.M. is set aside and this appeal is allowed.

Dictated and Corrected by me.

  
Commissioner,  
Saran Division, Chapra  
2/4/2014.

  
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Saran Division, Chapra  
2/4/2014