

**(2021) 02 PAT CK 0001**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 3713 Of 2020

Dharmendra Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** Feb. 1, 2021

**Acts Referred:**

- Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 - Rule 14(i), 14(iv)

**Hon'ble Judges:** Partha Sarthy, J

**Bench:** Single Bench

**Advocate:** Mukesh Kumar Jha, Rakesh Kumar Soni, Rakesh Kumar Srivastava

**Final Decision:** Allowed

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### **Judgement**

Heard learned counsel for the petitioner and learned AC to GP 13 for the State through video conferencing.

The petitioner has filed the instant application praying for quashing the order dated 12.3.2019 passed by the Divisional Commissioner, Tirhut Range,

Begusarai in Service Appeal no. 150 of 2018 whereby and whereunder the order of punishment passed by the District Magistrate-cum-Collector,

Vaishali has been affirmed, for quashing the order contained in Memo no. 502 dated 19.5.2017 passed by the learned District Magistrate-cum-

Collector, Vaishali whereby the punishment of reduction to lowest stage in time scale with non-cumulative effect for a period of three years as well as

punishment of censure has been awarded to the petitioner in the departmental proceeding.

The facts in brief are that the petitioner while posted in the office of the Block Development Officer, Goraul was served with a show cause notice

dated 22.1.2007 to the effect that although he was in judicial custody from 28.4.2005 to 5.5.2005 in West Bengal, however giving an incorrect certificate relating to his health he had hidden this fact. The petitioner was placed under suspension by order contained in memo no. 170 dated 20.2.2007. The petitioner filed his reply to the above show case and on 19.9.2007 also deposited the amount for the period that he had remained in custody. Subsequently, his suspension was revoked on 28.1.2008. Again by letter dated 27.10.2014 the petitioner was asked to file his show cause by another Conducting Officer to which he replied on 18.11.2014. Thereafter, the order of punishment contained in memo no. 502 dated 19.5.2017 was passed which was to the effect that in terms of Rule 14(i) and (iv) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (herein after referred to as 'the Bihar CCA Rules, 2005') the petitioner was put in lowest stage in time scale with non-cumulative effect for the period of three years as also censure. The petitioner preferred an appeal but the same was rejected by the Divisional Commissioner, Tirhut Range, Begusarai by his order dated 12.3.2019.

It is contended by learned counsel for the petitioner that after the petitioner filing 1st reply to the show cause notice in 2007, the suspension of the petitioner was revoked on 28.1.2008 and thereafter the respondents slept over the matter. It is submitted that there was gross violation of principles of natural justice in so far as no copy of the enquiry report of the Enquiry Officer was provided to the petitioner nor was the petitioner served with any show cause notice before awarding punishment. Thus, it is submitted that the order of punishment impugned herein is not sustainable in law and the order passed by the learned Divisional Commissioner rejecting the appeal is also illegal and fit to be set aside.

A counter affidavit has been filed on behalf of the respondent nos. 3 to 7, however the same does not contest the aforesaid two submissions made on behalf of the petitioner to the effect that the petitioner was not served with a copy of the enquiry report nor did he receive any show cause notice before passing of the order of punishment.

Having heard learned counsel for the parties and on going through the records of the case, the Court finds that in paragraph 14 of the writ application,

it has categorically been stated that the copy of the enquiry report was not provided to the petitioner nor was he served with any show cause before awarding of punishment. The said contention of the petitioner not having been denied by the respondents in their counter affidavit, the orders impugned cannot be sustained in view of the provisions of the Bihar CCA Rules, 2005 and different pronouncements of the Apex Court.

Thus, in view of the facts and circumstances of the case, the order of punishment contained in memo no. 502 dated 19.5.2017 passed by the learned District Magistrate-cum-Collector, Vaishali and the order passed in Service Appeal no.150/2018 dated 12.3.2019 by the learned Divisional Commissioner, Tirhut Range, Begusarai are set aside. Respondents shall serve a copy of the enquiry report on the petitioner giving time to the petitioner to file his reply to the same. Liberty is granted to the respondents to proceed with the departmental proceeding from this stage in accordance with law. Writ application stands allowed with the above observations and directions.