

(2006) 05 PAT CK 0003
Patna High Court
Case No: CWJC No. 11567 of 2000

Kailash Prasad

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: May 24, 2006

Citation: (2006) 4 PLJR 301

Hon'ble Judges: R.N. Prasad, J

Bench: Single Bench

Advocate: Sunil Kumar Mandal and Bipin Kumar, for the Appellant; Alok Kumar for the State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.N. Prasad, J.

The petitioner is a teacher in Primary School. An inspection was made by the Block Development Officer on 15.2.1997 and he was found absent and as such he was suspended and a proceeding was initiated against him. After completion of the enquiry, enquiry report dated. 10th August, 1997, Annexure-4 was submitted holding that charge was not established against the petitioner and as such recommendation was made for revocation of the suspension and also for dropping the proceeding. However, the disciplinary authority differing with the enquiry report awarded punishment of censure and during the period of suspension the petitioner will only be entitled to subsistence allowance vide order contained in letter dated 18.10.1997, Annexure-5. The petitioner being aggrieved by the order Annexure-5 filed appeal which was dismissed by the appellate authority vide order dated 1.6.2000, Annexure-9. The petitioner has now filed the writ petition for quashing the orders as contained in Annexures 5 and 9. A counter affidavit has been filed on behalf of the respondents wherein it has been admitted that enquiry report was submitted holding the petitioner not guilty of the charges and recommendation was

made for revocation of suspension and also for dropping the proceeding. However, it has been stated that order of punishment has been passed by the competent authority after considering the entire materials available on the record.

2. The submission of the counsel for the petitioner is that after filing of the enquiry report no show cause notice was issued to the petitioner for differing with the enquiry report and as such the order of punishment is bad in law. On the other hand, learned counsel for the respondents supported the orders impugned.

3. On consideration this much is obvious that the petitioner was found absent on the date of inspection. An enquiry was held and enquiry report was submitted holding the petitioner not guilty of the charges. The Enquiry Officer recommended for revocation of suspension and dropping the proceeding. However, the Disciplinary Authority differing with the enquiry report passed the order of punishment, Annexure-5 without issuing notice to the petitioner. It is well established rule of law that the disciplinary authority has right to differ with the enquiry report but in such a situation, the disciplinary authority is required to issue notice to the delinquent mentioning the point of difference. But in the instant case nothing of the kind has been done. The appellate authority also did not consider the aforesaid aspect of the matter and dismissed the appeal. In the circumstances, it is evident that the legal requirement was not followed by the disciplinary authority in passing the order of punishment. Thus, the writ petition is allowed. The orders impugned, Annexures 5 and 9 are hereby quashed but without any order as to costs.