

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12672 of 2000

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Md. Shafique Ansari, son of Sheikha Rahman resident of Mohalla-Kanke, Millat colony, (Churi Tola) P.S. + P.S. Kanke, Dist:-Ranchi

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. Director General-cum-Inspector General of Police, Bihar, Old Secretariat, Patna
3. D.I.G. of Police, Rail, Bihar, Patna
4. S.P., Rail, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad

Ms.. Maruti Kumari, Advocates

For the Respondent/s :

Mr. Uday Shankar Singh, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 22-07-2015

1. The petitioner, at the relevant point of time was working as a Constable under Patna Rail Police. A departmental proceeding was initiated against him for his unauthorized absence for the period 09.05.1995 to 22.01.1996 and 12.04.1996 to 05.07.1996. An Inquiry Officer was appointed to enquire into the said charge of misconduct.

2. The petitioner appears to have taken a plea before the Inquiry Officer that because he was suffering from *Acute Psychotic Tendencies*, he remained absent from duty for the said period. The Inquiry Officer accepted the plea so-taken by the petitioner and

submitted his report, holding that the charge of misconduct against the petitioner could not be proved, there being valid reasons for his absence. The enquiry report was considered by the disciplinary authority.

3. Pursuant to an earlier order passed by this Court in the present case, the respondents have produced before this Court the original records of the connected departmental proceeding. From the said record, it appears that the disciplinary authority i.e. the Superintendent, Rail Police, Patna disagreed with the findings recorded by the Inquiry Officer and made following observations:-

“इस विभागीय कार्यवाही का संचालन श्री बी०पी० सिन्हा, रेल आरक्षी निरीक्षक, द्वारा किया गया है। इन्होंने संचालन के दौरान गवाहों का बयान, प्रदर्शों की जांच की है। संचालनोपरान्त आरोपित के ऊपर लगाये गये आरोपों के लिए निर्दोष पाया है। इनका मंतव्य छिछलापन ढंग का है।”

4. According to him, the charge against the petitioner stood proved on the basis of evidence adduced in course of departmental enquiry. The Disciplinary Authority after having held the petitioner guilty of the charge levelled against him, issued to the petitioner second show cause notice, seeking his explanation as to why he should not be dismissed from service. The said show cause notice was issued on 26.02.1997. It is not clear whether the petitioner responded to the said second show cause notice. The disciplinary



authority by impugned order dated 08.07.1997 (Annexure-1) imposed upon the petitioner punishment of dismissal from service. From the original records, it appears that in the said order dated 08.07.1997, the disciplinary authority recorded that he agreed with the findings of the Inquiry Officer, while imposing upon the petitioner, the said punishment of dismissal from service. This, in my view, shows complete non-application of mind by the disciplinary authority. While issuing second show cause notice to the petitioner, he had recorded his disagreement with the report of the Inquiry Officer, which was admittedly in favour of the petitioner whereas in the final order passed on 08.07.1997 he recorded that he was agreeing with the report of the Inquiry Officer, for holding him guilty of the charge levelled against him.

5. Even if, it is presumed that the disciplinary authority proceeded to impose upon the petitioner punishment of dismissal from service after recording disagreement from the report of the Inquiry Officer, apparently the procedure adopted by the disciplinary authority for doing so, cannot be approved. It is settled legal position that if a disciplinary authority intends to disagree with the report of the Inquiry Officer, which is favourable to the delinquent, it is obligatory upon the disciplinary authority to issue tentative notes of proposed disagreement from the findings recorded by the inquiry

officer in favour of the delinquent and to give the delinquent adequate opportunity to deal with such tentative notes of disagreement. The disciplinary authority only after considering the response of the delinquent, if any, on his proposed notes of disagreement, could come to his conclusion on the guilt of the delinquent or otherwise.

6. Reference may be made in this regard to the decision of the Supreme Court in case of *Punjab National Bank and others Vs. Kunj Behari Misra and others reported in (1998) 7 SCC 8* and *Yoginath D. Bagde Vs. State of Maharashtra reported in (1997) 7 SCC 739*.

7. This procedure having not been followed, the order of the disciplinary authority imposing punishment of dismissal from service upon petitioner cannot be sustained. The order of the appellate authority dated 15.09.1998 (Annexure-5) also cannot be sustained.

8. The petitioner had preferred his representation before Inspector General of Police, Railway against the orders of the disciplinary authority and the appellate authority which came to be rejected by an order dated 26.11.1999 (Annexure-7).

9. In the background of the facts and discussion as above, none of the orders dated 08.07.1997, 15.09.1998 and 26.11.1999 can be sustained and are accordingly, quashed.

10. Consequences of quashing of the orders shall follow.

The respondents are directed to reinstate the petitioner in service forthwith. In the facts and circumstances of the case, I hold that the petitioner shall be entitled for entire back wages for the period during which he had to remain out of service because of illegal orders passed by the respondents.

11. It will, however, be open to the respondents to proceed against the petitioner after giving him due opportunity by supplying him notes of disagreement from the report of the Inquiry Officer. The disciplinary authority may thereafter, upon considering the petitioner's explanation against the tentative notes of disagreement come to his own finding and pass appropriate orders in accordance with law. The order directing the respondents to reinstate the petitioner has been passed, in view of the submissions made on behalf of the petitioner that he has not yet attained the age of superannuation.

12. This application is accordingly, allowed.

13. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

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