

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18660 of 2015

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Jay Prakash Gupta Son of Yogendra Prasad Resident of Village-Mahna Gunni,
Police Station- Betia, District West Chamaparan. Petitioner

Versus

1. The State of Bihar through chief Secretary, Govt. of Bihar, Patna.
 2. The Director General of Police, Bihar, Patna.
 3. The Additional Director General of Police Bihar, Patna..
 4. The Deputy Inspector General , Military Police (Central Division) Patna.
 5. The Commandant , Bihar Military Police -4 , Dumrao, Buxar. Respondents
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Appearance :

For the Petitioner/s : Mr. Satya Prakash, Advocate

For the Respondent/s : Mr. D.K. SINHA, AAG 2.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 11-02-2016

The petitioner seeks following reliefs:-

- a) Quashing of 2nd show cause notice dated 6.8.2014,
contained in memo no.194, issued by respondent no.5.
- b) Quashing final order of punishment dated 16.9.2014,
contained in memo no.1554, issued by respondent no.5.
- c) Quashing of appellate order dated 27.11.2014, contained
in memo no. 1187, issued by respondent no.4, by which
appeal preferred by the petitioner against order of
punishment, dated 16.9.2014, has been rejected.
- d) Quashing of order dated 8.5.2015, contained in memo no.
1890, issued by respondent no.2, by which petitioner's
memorial has been rejected.

2. The petitioner was appointed on the post of constable



in BMP-10 on 18.11.1996. During his service period he achieved a number of awards. He also held the post of 'Mantry' of Bihar Police Mens Association in the year 1998. In the year, 2012 steps were taken for appointment of constables against Advertisement no. 1 of 2012. Two of the selected candidates, namely Sanjeev Kumar and Sunil Kumar made complaint that petitioner is seeking demand of Rs.50,000/- to qualify them in chest mapping test. Enquiry was conducted by the Deputy Inspector General, Military Police and vide letter no. 418 dated 9.9.2013, he recommended for taking harsh action against the petitioner and two other employees. Petitioner was suspended and departmental proceeding bearing proceeding no.1 of 2014 was initiated vide order, dated 17.9.2013. After conclusion of departmental proceeding, the Conducting/enquiry officer submitted his enquiry report exonerating the petitioner of all the charges. The disciplinary officer, however, differing with the findings of the enquiry report found the petitioner guilty of charges and issued 2nd show cause vide letter, contained in memo no. 194, dated 6.8.2014.

3. I have heard learned counsel for the petitioner as well as learned counsel appearing for the other side.

4. The petitioner has assailed the impugned letter/order on different grounds. However, his case would succeed on the

limited issue itself that while issuing second show cause, the disciplinary authority should not have recorded the findings of guilt while differing with the opinion of the enquiry officer. The power to differ with the view of the disciplinary officer is not in question. The disciplinary authority for the tentative reasons, may differ with the findings of the guilt. But at the stage of issuance of second show cause, the disciplinary authority cannot hold him guilty as it would amount to pre-judging the issue, which is not permissible in law. The law on issue stands squarely covered in case of Ranjit Singh Vs. State Bank of India and others, reported in 2014 PLJR 386. As the second show cause notice was itself defective and not in accordance with law, the same is set aside. Consequently, the impugned orders of punishment passed on basis of second show cause notice, too are not sustainable in law and are accordingly set aside. As the petitioner succeeds on technical ground, the matter is remitted to the disciplinary authority to proceed afresh from the stage of issuance of 2nd show cause.

5. The writ petition is thus allowed.

(Samarendra Pratap Singh, J)

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