

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17923 of 2013

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Ajay Kumar Sinha Son Of Late Anand Mohan Prasad Sub Inspector Of Police
(Dismissed) Resident Of Mohalla- Subhash Colony, Chandmari, Motihari (East
Champaran), P.S.- Town, District- Motihari

.... Petitioner/s

Versus

1. State Of Bihar Through The Director General Of Police, Patna
2. Director General Of Police (Vigilance), Patna
3. Inspector General Of Police, Patna Zone
4. Dy Inspector General Of Police, Magadh Range, Gaya
5. Superintendent Of Police, District- Aurangabad
6. Shri Sanjay Kumar, Ex S.D.P.O. (Sadar) Aurangabad Presently Posted As Dy.
S.P. Sitamarhi (Proceeding Officer)

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Manish Kumar,
For the State : Mr. Ashish Kumar Lal,
For the Vigilance : Mr. Arvind Kumar,

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 03-05-2016

Heard learned counsel for the petitioner as well as learned
counsel appearing for the State.

The petitioner was appointed on 21.08.1994, as Sub-
Inspector of Police by Inspector General of Police (Admn.), Bihar,
Patna, in the year 1994. A copy of appointment letter is contained in
Annexure-20. The petitioner was departmentally proceeded for certain
acts of misconduct. The Inquiry Officer in his inquiry report
concluded findings of guilt. On receipt of the inquiry report, the
D.I.G. of Police, Central Range, Bihar, Patna, passed the order of

dismissal on 10.02.2012 and the appeal preferred by the petitioner was also dismissed by the I.G. of Police, Central Zone, Bihar, Patna.

Learned counsel for the petitioner has assailed the impugned proceeding and the order of punishment on a number of grounds, including the ground of jurisdiction. The petitioner in support of his submission has drawn my attention to Article 311 (1) of the Constitution of India, Rules 825 © and 656 of the Bihar Police Manual, which mandate that an employee cannot be dismissed/removed by an officer subordinate to the appointment authority. Exactly a similar issue came for consideration before the L.P.A. Bench in L.P.A. No. 1571 of 2014 arising out of C.W.J.C. No. 12013 of 2012. In the aforesaid case, the respondent-petitioner Shashi Bhushan Prasad was similarly appointed like the petitioner by the Inspector General of Police, Patna and as such the Division bench accepted the contention of the respondent-petitioner.

Learned counsel for the State has justified the proceeding as well as the impugned order of punishment. He submits that the petitioner did not raise the issue of jurisdiction at appellate stage and as such, the said issue raised for the first time before this Court, ought not to have considered. In support of his submission, learned counsel has relied upon a decision of Hon'ble Apex Court in the case of **State Bank of India Vrs. Ram Das and Anr.**, reported in

2003 (12) SCC 474, particularly, para-27.

In my view, the case law relied upon by the respondent would not be applicable to the facts and circumstances of the instant case. In the aforesaid case, the parties subjected themselves to the jurisdiction to the Arbitrator and participated in the proceeding without raising an objection. In the instant case, the position is different, as there is no dispute that the Enquiry Officer had no jurisdiction to conduct the enquiry. Here, in this case, on conclusion of the inquiry, the disciplinary authority after asking show-cause passed an order of punishment, for which he lacked jurisdiction, since the petitioner was appointed by a superior authority. The objection raised by the learned counsel for the State is not sustainable in law and is accordingly rejected.

As such, in view of the clear mandate of Article 311 (1) of the Constitution of India, Rules 825 © and 656 of the Bihar Police Manual, the impugned order of dismissal passed by the Deputy Inspector General of Police, Central Zone, Bihar, Patna is set aside. The enquiry report submitted by the conducting officer would now be considered by the Inspector General of Police, Patna, who would be the disciplinary authority in this case, in view of Article 311 (1) of the Constitution of India, Rules 825 © and 656 of the Bihar Police Manual and may proceed further in the matter.

It will be open for the petitioner to take all other grounds available under the law in the departmental proceeding before the Inspector General of Police, Patna.

With the aforesaid liberty, the writ application is allowed.

(Samarendra Pratap Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11-05-2016
Transmission Date	