

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12358 of 2008

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MD.NABIB @ MD.NAWI, SON OF LATE MD. SULEMAN, RESIDENT OF VILLAGE-NINPUR,
POLICE STATION CHAUTHAN, DISTRICT KHAGARIA Petitioner

Versus

1. THE STATE OF BIHAR THROUGH THE COMMISSIONER MUNGER
 2. THE DISTRICT MAGISTRATE CUM COLLECTOR, KHASGARIA
 3. THE SUPERINTENDENT OF POLICE, KHAGARIA AND
 4. THE CIRCLE OFFICER, CHOUTHAN, KHAGARIA Respondents
- =====

Appearance :

For the Petitioner : Mr. RATNA DAS, Advocate

For the Respondents : Mr. Prabhat Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 17-05-2016

The petitioner seeks quashing of the order dated 19.1.2004, passed by the District Magistrate cum Collector, Khagaria dismissing him from service, as well as order, dated 4.7.2008 of the Commissioner Munger Division, Munger affirming the same in Service Appeal No. 03-10/2006/23-14/2004.

Petitioner at the relevant time was working as a Dafadar at village Pipra, Police Station Chauthan, District Khagaria under the Bihar Gramin Police. A Cello car, allegedly of theft, was recovered from his premises. He was departmentally proceeded for the charges of theft of a Cello car on 8.12.2011. One Krishna Mohan Prasad, Circle Officer, Chouthan, was appointed as the Enquiry officer. Some more charges were also made against the petitioner vide supplementary charge sheet, dated 1.4.2002. The Enquiry officer on conclusion of enquiry held him guilty of all the charges. The latter forwarded the enquiry report to the Disciplinary authority who issued

2nd show cause notice to the petitioner. Not being satisfied with the show cause reply, the disciplinary authority awarded punishment of dismissal from service.

The petitioner has assailed the departmental proceeding as well as the impugned order of punishment on a number of grounds. He submits that he was not provided adequate opportunity to defend his case. No copy of enquiry report was furnished to him along with the show cause notice, which would have enabled him to make his comments against the adverse findings recorded therein effectively. No document was produced in course of enquiry nor any witness was examined.

Counsel for the State has justified the impugned action and submitted that the charges leveled against the petitioner were grave and serious. He submits that the conduct of the petitioner infringed communal harmony and as such he has rightly been awarded punishment of dismissal from service.

I have heard learned counsel for the parties and perused the materials on record.

Though the petitioner has raised a number of pleas, the writ petition can be adjudicated on a limited issue that a copy of the enquiry report was not forwarded to the petitioner.

The State has filed more than one affidavit, but it has not controverted the petitioner's assertion that no copy of enquiry report

was given to him. In this view of the matter, I am in agreement with the submission of the petitioner that non-supply of the enquiry report has caused prejudice, in making his reply to the adverse findings recorded by the enquiry officer.

In the result, this writ petition succeeds. The impugned order of punishment dated 19.1.2004 passed by the District Magistrate, Khagaria as well as appellate order dated 4.7.2008, passed by the Commissioner, in Service appeal no. 03-10/2006/23-14/2004 are set aside and the matter is remanded to the Disciplinary officer to proceed afresh from the stage of forwarding a copy of the enquiry report. The disciplinary authority would conclude petitioner's case within six months from the date of receipt of a copy of this order. The petitioner would have an opportunity to file a detailed reply to the show cause notice. The disciplinary authority thereafter would proceed and pass order in accordance with law. There would be no automatic reinstatement of the petitioner, save and except the earlier position prior to the dismissal would be restored.

Shashi.

(Samarendra Pratap Singh, J)

AFR/NAFR	
CAV DATE	NA
Uploading Date	21.06.2016
Transmission Date	21.06.2016