

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10822 of 2015

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1. Rohit Kumar, son of Late Tantra Nath Singh, resident of village and post-Punhad, Police Station- Ghanshyampur, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Home Secretary Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Deputy Inspector General of Police, Shahabad at Dehri-on-Sone.
5. The Superintendent of Police, Buxar.
6. The Inspector Dumaraon-cum-Enquiry Officer, District- Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Banwari Sharma, Adv.
 Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Anuj Kumar, A.C. to G.P.24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-12-2016

Re: C.W.J.C. No. 10822 of 2015

With

I.A.No.8624 of 2015

With

I.A.No.7141 of 2016

Heard Mr. Banwari Sharma, learned counsel for the petitioner and Mr. Anuj Kumar A.C. to G.P.24 for the State.

With the consent of the parties, the writ petition has been heard with a view to final disposal at the admission stage itself.

The writ petition was initially filed questioning the order of suspension bearing Memo No.1036 dated 28.2.2012, a copy of which is impugned at Annexure-1 to the writ petition. During the pendency of the writ petition the disciplinary proceeding was held and an order of dismissal has been passed against the petitioner bearing Memo No. 2708 dated 27.8.2015 by the Superintendent of Police, Buxar



impugned at Annexure-6 to interlocutory application bearing No. 8624 of 2015. The order of dismissal has also been affirmed by the appellate authority vide order bearing No. 613 dated 9.5.2016 placed on record vide Annexure-9 to I.A.No.7141 of 2016.

Mr. Banwari Sharma learned counsel for the petitioner while questioning the orders of punishment passed during the pendency of the writ petition has submitted that although the disciplinary proceedings has been held but the petitioner has not been afforded with an opportunity to question the enquiry report by the disciplinary authority inasmuch as no show cause against the enquiry report has been asked from the petitioner by the disciplinary authority nor this defect has been noticed by the appellate authority. The counsel for the respondent was asked to seek instructions and file counter affidavit on the issue raised which stands noted in the order passed on 17.9.2016. Mr. Anuj Kumar A.C. to G.P.24 while supporting the impugned order on merits, fairly admits that the petitioner was not served with the second show cause after submission of the enquiry report and before the passing of the punishment order.

Rule 18(3) of the Bihar Government Servant (Classification, Control and Appeal) Rules,2005 mandates and casts an obligation on the disciplinary authority to forward the copy of the enquiry report together with its findings, if any, to enable the Government servant to submit his explanation thereto, if he/she so desires, but in the present



case this mandatory obligation has been waived of by the disciplinary authority to pass the punishment order and which illegality stands perpetuated by the appellate authority.

In view of the undisputed position existing where the order of punishment is not preceded with the service of show cause on the enquiry report, the order of punishment passed by the Superintendent of Police, Buxar bearing No. 2708 dated 27.8.2015 impugned at Annexure-6 to I.A. No. 8624 of 2015 together with the order bearing memo No. 613 dated 9.5.2016 of the Deputy Inspector General of Police, Shahabad Range, Dehri-on-Sone impugned at Annexure-9 to I.A.No.7141 of 2016, cannot be upheld and are accordingly quashed and set aside. The writ petition is allowed. The matter is remitted to the Superintendent of Police, Buxar to proceed in the matter afresh but in accordance with the law and in observance that the statutory rules, from the stage of service of copy of enquiry report.

The writ petition is allowed.

The interlocutory applications stand disposed of.

Bibhash/-

(Jyoti Saran, J)

NAFR	
CAV DATE	
Uploading Date	13.12.16
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