

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23162 of 2012

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Pawan Kumar Jha, Son of Late Ram Chandar Jha, Resident of Village- Kanhauli,
P.O.- Kanhauli, P.S.- Kanhauli, Dist.- Madhubani. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
 2. The Home Secretary, Govt. of Bihar, Patna
 3. The Director General of Police, Bihar, Patna
 4. The Deputy Inspector General of Police, Military Police, (Central Division)
Patna
 5. The Commandant, Bihar Military Police-4, Dumraon, Buxar
 6. The D Company Samadeshk, Bihar Military Police- 4, Dumraon, Buxar
.... Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Nandlal Kumar, Advocate
Mr. Madhuri Lata, Advocate

For the Respondent/s : Mr. Pravin Kumar Verma, AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 03-05-2016

Heard learned counsel for the petitioner and the State.

2. The petitioner was a constable in Bihar Military Police-5 seeks quashing of the order dated 29.02.2012, passed by the Commandant, Bihar Military Police, Dumraon (respondent no.5) in Departmental proceeding no. 46/2011 dismissing him from service, which was also affirmed in appeal vide Memo no. 423, dated 11.04.2012 and Memo no. 3032, dated 11.07.2012, passed by respondent no.3, in appeal and memorial.

3. In the year 2011, the petitioner was posted under Bihar Military Police- 4 at Dumraon, Buxar.

4. The petitioner was proceeded departmentally for three

charges contained in Memo no. 1969 dated 07.11.2011. The charges were that the petitioner was not found on duty on five dates, namely, 27.09.2011, 28.09.2011, 20.09.2011, 29.10.2011 and 21.10.2011. On some days i.e. 26.09.2011, 20.10.2011 and 21.10.2011, the petitioner was found in the state of intoxication.

5. On conclusion of the enquiry, the enquiry officer recorded a finding of guilt. Consequent, thereto the Commandant, BMP-4, Dumraon, Buxar, dismissed him from service.

6. The petitioner filed an appeal and memorial against the punishment, which too were rejected. The petitioner has challenged the impugned proceedings as well as order of punishment.

7. The petitioner submits that the order of dismissal was passed by the Commandant, BMP-4, Dumraon, Buxar, who was not competent to dismiss him. He next submits that the copy of the enquiry report was not handed over to him. He lastly submits that he was held guilty for being in the state of intoxication without subjecting him to scientific and proper medical test.

8. Counsel for the State apart from filing a counter affidavit, has filed supplementary counter affidavit, on 25.04.2016. He submits that in view of power conferred under Rule 55 read with Rule 94 of the Bihar Police Manual, the Governor of Bihar has been pleased to amend Section 661 (kh) of Bihar Police Manual vesting

both the Superintendent of Police as well as Commandant, Bihar Military Police with power of making appointments to the post of constables. It is not in dispute that the post of Commandant, Bihar Military Police is not a subordinate post to that of Superintendent of Police.

9. In this view of the matter, I do not find any merit in the submission of the learned counsel for the petitioner that the Commandant, Bihar Military Police was not competent to pass the order of punishment.

10. The other submission of the petitioner is that no adequate opportunity was provided to defend his case in so much so a major punishment was inflicted without providing a copy of the enquiry report. The petitioner has made specific averment to the effect in para.6 of the writ petition. I find that there is no specific denial of the assertion of the petitioner by the respondent in their counter affidavit. The reply to para 6 is contained in para 8 of the counter affidavit, which is quoted herein below:

“8. That the statement made in para 6, 9 and 11 are denied. The order of dismissal has been passed after following the due process of departmental proceeding:

The petitioner was found guilty of severe indiscipline, dereliction of duty and found an unable constable and was placed under suspension;

charges were framed against him giving a proper show cause notice. That subsequently the departmental proceeding was initiated being no.-46/11 and after following due process of enquiry and examining witnesses and furnishing copies to the delinquent as well as after giving show cause notices properly, the final order of dismissal has been passed.”

11. As no enquiry report was served, the impugned order of dismissal passed by the respondent no.5 and affirmed in appeal, are set aside. The quashing of the impugned order would not amount to reinstatement of the petitioner and he would remain under suspension. The respondents would be at liberty to proceed afresh against the petitioner from the stage of serving a copy of the enquiry report. The petitioner would co-operate in the enquiry report.

12. It is expected that the enquiry would be completed within a period of six months from the date of receipt of a copy of this order.

13. This application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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