

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16070 of 2006

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Karun Kumar, Son of Late Satyadeo Singh, resident of Village- Lakhisarai
(Nandnama) , P.S.- Nandnama, P.S.- Ramgarh Chowk, District- Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Old Secretariat, Patna.
3. The Director General-cum-Inspector General, Bihar, Patna.
4. The Senior Superintendent of Police, Patna. Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Verma, Advocate

For the Respondent/s : Mr. S. Raza Ahmed, AAG-9

: Mr. AC to AAG-9.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 16-03-2016

Heard learned counsel for the petitioner and the
learned counsel appearing for the State.

2. The petitioner seeks quashing of the order, dated 03.11.2006 passed in appeal by Director General-cum-Inspector General, Bihar, Patna (respondent no.3) affirming the order of punishment, dated 07.08.2005 passed by the Senior Superintendent of Police, Patna by which increment up to six months has been withheld. It was further directed by the disciplinary authority that the petitioner would not be entitled to any other emoluments, other than subsistence allowance paid for the period of suspension.

3. The petitioner was posted as a constable in Danapur Civil Court in the office of Sub-Divisional Prosecution Officer during the year 2003. He was transferred to Purnia District

vide order no.3747 of 2003 and was issued Command paper on 25.08.2003 for giving joining at Patna Police Line, Patna. It is alleged that the petitioner refused to receive the command paper and was consequently suspended for not obeying the order of the superior authority vide District Order No. 7154/2003.

4. A departmental proceeding followed order of suspension. On conclusion of the enquiry, the enquiry officer exonerated the petitioner of the charges. The disciplinary authority, the Senior Superintendent of Police, Patna differed with the enquiry report and held him guilty of the charges and awarded punishment of withholding of increments for six months, amounting to a black mark. He further observed that the petitioner would not be entitled to any other emoluments other than the subsistence allowance for the period of suspension. The disciplinary authority while differing with the enquiry report was of the view that the enquiry officer had submitted his report only taking into consideration defence plea.

5. The petitioner, being aggrieved with punishment of dismissal filed an appeal, which was rejected vide order, dated 03.11.2006 passed by Director General-cum-Inspector General, Bihar, Patna holding the same not maintainable, in view of Rules 851 and 853 of the Bihar Police Manual.

6. The petitioner has challenged the impugned order



on a number of grounds. He submits that as the enquiry officer exonerated him of the charge, the disciplinary authority ought not to have held him guilty, without affording an opportunity to defend himself. In support of his submission, he states that in case the disciplinary authority decides to disagree with the findings of enquiry officer, it is incumbent upon him to record his tentative reasons for his disagreement and provide an opportunity to the delinquent to make his response to the same. In support of his submission, learned counsel for the petitioner has relied upon a judgment in case of **Dinesh Prasad Vs. State of Bihar & Ors**, reported in **2006 (4) PLJR 514, para 19** and in case of **Punjab National Bank & Ors Vs. Kunj Behari Misra**, reported in **(1998) 7 SCC 84**.

7. Mr. S. Raza Ahmad, learned counsel for the State has justified the impugned actions of the respondents. Learned counsel submits that the Clause 6 of Appendix 49 to Rule 828 of the Bihar Police Manual does not provide for giving show-cause, if the disciplinary authority, either agrees or disagrees with the findings recorded by the enquiry officer. The disciplinary authority and the appellate authority have followed mandates of Clause 6 of Appendix 49 of Rule 828 to the Bihar Police Manual.

8. I have heard the learned counsel for the parties.

9. The issue before this Court is whether the



disciplinary authority under Bihar Police Manual is not required to give a show-cause notice to a delinquent, if the former disagrees with the findings of exoneration of guilt recorded by an enquiry officer. In other words, whether the disciplinary authority is empowered to award punishment without issuing a show-cause notice before he /she records a finding of guilt, while differing with the findings of the enquiry officer, exonerating the delinquent of the charges.

10. Learned counsel for the State in justification of the action taken by the disciplinary authority have placed heavy reliance upon Clause 6 of Appendix-49 to Rule 828 of Bihar Police Manual. Inquisitively, learned counsel for the petitioner has too placed reliance on Clause 6 of Appendix 49 of the Bihar Police Manual. As the disputes centers round extent and ambit of Rule 828 and Clause 6 of Appendix-49 to Rule 828 of Bihar Police Manual, the same are quoted herein below for easy reference:

828. *Infliction of major punishments.-*

(a) Of the punishments permitted by rule 824, the items in serials (a) to (f) of that rule shall be regarded as major punishments, and shall be inflicted by an officer not below the rank of Superintendent.

(b) Without prejudice to the provision of the Public Servants Enquiries Act, 1850, no order of dismissal, removal, compulsory retirement or reduction shall be passed on any police

officer (other than an order based on facts which have led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself (see Appendix 49).

(c) In case in which, forfeiture of increment is proposed to be an adequate punishment, this may be inflicted without form enquiry in the form of a proceeding but every such matter shall state clearly: first, the charges against the defaulter; then his answers to each charge of the officer inflicting the punishment. In such cases, the Superintendent need not hold the enquiry himself, nor shall the delinquent have the right to appear before him, but he has the right to appear before the officer deputed to record the evidence and to take his defence; and such officer, who shall not be below the rank of inspector, shall come to a clear finding on each charge and shall submit the record with his recommendations to the Superintendent for orders.

(d) These provisions shall not be followed when the Governor is assured that it is not possible to do this in the interest of the safety of the State according to Article 311 (2) of Indian Constitution or it is not possible to follow these provisions entirely and there is



no suspicion that in not following them the accused may not get justice. Whenever such a possibility arises, the officer who is competent to remove or reduce delinquent in the rank shall formally give orders as decided by the Governor which shall be considered final.”

Appendix 49 (Clause 6): When the orders for punishment are passed by an authority other than the person conducting the enquiry into the conduct of the Government officer concerned, it will be sufficient if the authority passing orders of punishment definitely records his agreement or disagreement with the person by whom the enquiry was conducted. This is intended to meet the case in which a Superintendent or other responsible officer delegates a proceeding to a competent subordinate to conduct. In such a case it is the duty of the officer to whom the proceeding is delegated to conduct it throughout upon the lines prescribed, to see that the record is properly complied, and to record his finding upon the charges framed after which the record should be submitted to the delegating officer who should, if the proceeding is in order, record his acceptance or otherwise of the finding, and pass order of punishment; or if the proceeding be not in order, take any action necessary.”



11. It is true that Clause 6 of Appendix-49 does not specifically state that a show-cause notice is required to be given to a delinquent, if the disciplinary authority disagrees with the finding of the enquiry officer recorded in favour of the petitioner. It would be relevant to state here that more or less a similar issue came for consideration in case of Punjab National Bank & Ors Vs. Kunj Behari Misra, reported in (1998) 7 SCC 84. In the aforesaid case, the respondent too was departmentally proceeded, however, the report of the enquiry officer came to be in his favour. The disciplinary authority disagreeing with the findings recorded by the enquiry officer awarded minor punishment. Respondent Kunj Behari Misra challenged the punishment on the ground that it was incumbent upon the disciplinary authority to provide an opportunity, if it decided for reasons to be recorded to differ with the findings of the enquiry officer.

12. Opposing the submission of Kunj Behari Misra, counsel for the Bank submitted that Regulation 7 (2) does not require providing of an opportunity or being heard, in case the disciplinary authority differs with the findings recorded by the enquiry officer. Dispelling the argument of the counsel for the Bank, the Hon'ble Apex Court observed that even if Regulation 7 (2) does not specifically provide for giving opportunity of being heard, the principles of natural justice have to be necessarily read into



Regulation 7 (2) of the Rules. The Hon'ble Apex Court observed that whenever the disciplinary authority disagrees with the findings of the enquiry officer on any such charge, it must record its tentative reasons for such disagreement and to give to the delinquent officer/employee an opportunity to represent, before it records its conclusive findings. The relevant extract of para 19 of the judgment of Punjab National Bank & Ors. Vs. Kunj Behari Misra (supra) is quoted herein below:

“The result of the aforesaid discussions would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of

misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

13. It would thus appear from bare perusal of the judgment rendered by the Hon'ble Apex Court in the case of Punjab National Bank & Ors. Vs. Kunj Behari Misra (supra) that even if a regulation does not permit for being heard, the principles of natural justice have to be necessarily read into such rules and regulations, where the disciplinary authority disagrees with the finding of the enquiry officer on any such charge.

13. The aforesaid view was re-affirmed in the case of **Lav Nigam Vs. Chairman and Managing Director, ITI Ltd. & another**, reported in (2006) 9 SCC 440, which approvingly quoted and relied upon para 19 of the said judgment.

14. It is thus more than evident from the principles laid down by Hon'ble Apex Court that depriving an opportunity to an employee to meet the grounds on which the disciplinary authority differs with the findings of the enquiry officer, before reaching a final conclusion on the point of guilt, would be in derogation of principles of natural justice, fairness and reasonableness and would be violation of rights enshrined under Articles 14 and 16 of the Constitution of India. Following the principle laid down in the case of Punjab National Bank & Ors. Vs. Kunj Behari Misra (Supra), I am of the

considered view that the principles of natural justice would have to read into Clause 6 of Appendix 49 of Rule 828 of the Bihar Police Manual.

15. In the result, this application is allowed. The impugned order of punishment as well as the appellate order affirming the same are set aside and the matter is remitted to the disciplinary authority to proceed afresh from the stage of issuance of second show-cause notice.

16. With the aforesaid observation, this application stands allowed.

(Samarendra Pratap Singh, J.)

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