

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8380 of 2008

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Manoj Kumar @ Manoj Kumar Singh, Son of Late Kusheshwar Singh, At + P.O. Bhaddi, P.S.- Saur Bazar, District – Saharsha (at present petitioner is working as Writer Constable at the Nagar Nausa P.S. in the district of Nalanda.

.... Petitioner.

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Range, Patna, Bihar.
4. The Deputy Inspector General of Police, Patna Range, Patna, Bihar.
5. The Senior Superintendent of Police, Patna, Bihar.
6. The Superintendent of Police, Nalanda, Bihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Advocate
Mr Rajeev Kumar Singh
Mr. Rakesh Kumar Singh
Mr. Mrityunjay Kumar

For the Respondent/s : Mr. (AAG5)

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 08-01-2016

The petitioner seeks quashing of the order of the Deputy Inspector General of Police, Central Range, Patna, contained in Memo No. 261, dated 21.02.2007 and the consequential order, dated 12.03.2007 passed by the Superintendent of Police, Nalanda whereby he was demoted to the post of writer constable from the post of Assistant Sub-Inspector of Police. The petitioner also sought direction to the respondents to post him as Sub-Inspector of Police.

2. Before I consider the grounds on which the petitioner has assailed the impugned order, it would be relevant to notice the facts of the case in brief.



3. The petitioner was appointed as constable on 01.04.1973. He was promoted to the post of Assistant Sub-Inspector of Police on 10.12.1986. On 07.01.2006, he was promoted to the next post i.e. Sub-Inspector of Police. However, no posting was given, as it transpired that a departmental proceeding, being proceeding no. 315 of 2005 was pending against him and he was already put under suspension, however, he was released from suspension on 13.11.2005. A copy of charge-sheet, bearing Memo no. 16838 dated 12.11.2005, is contained in Annexure-6, which was also forwarded to the petitioner. It has been alleged that while the petitioner was posted in Maner police station, he committed grave mistake in submitting police verification of one Md. Sahnawaz as resident of Village Bank, P.S. Maner, District-Patna. On the basis of petitioner's verification report Md. Sahnawaz was issued Indian Passport. Later on, it transpired that Md. Sahnawaz was a Pakistani terrorist. One Ram Bilas Mahto was appointed as conducting officer in the departmental proceeding, being Proceeding no. 315 of 2015. The petitioner submitted his reply on 20.03.2006 denying the charge. On conclusion of enquiry, the enquiry officer submitted his report holding the petitioner guilty of charges. On the basis of report, the Deputy Inspector General of Police, Central Range, Patna demoted the petitioner from the post of Assistant Sub-Inspector of Police to the post of writer constable vide order dated

21.02.2007. The appeal filed by the petitioner was also dismissed by the Inspector General of Police, Central Range, Patna vide his order dated 24.05.2008, which is impugned in I.A. No. 3111 of 2015.

4. The petitioner has assailed the proceeding as well as order of punishment on a number of grounds. He submits that the enquiry was conducted behind his back. No witness was examined in his presence and no document was exhibited. Furthermore, copy of the enquiry report was not given to him nor second show-cause was asked.

5. A counter affidavit has been filed on behalf of the respondents justifying the impugned actions.

6. As there are allegations and counter versions, this Court called for the record of the proceedings. One thing would be evident from perusal of the record that the proceeding was held on more than half a dozen dates. It was the petitioner, who did not choose to appear in the proceedings. An enquiry officer would not wait indefinitely, if the delinquent does not choose to appear and no lenient view can be adopted in such circumstances. The witnesses were examined and documents were exhibited. However, the case of the petitioner would succeed alone on the ground that no second show-cause was given nor the copy of the enquiry report was furnished, which deprived him of an opportunity to make his submissions

against the adverse comments recorded by the enquiry officer.

7. The Hon'ble Apex Court in case of Punjab National Bank Vs. Kunj Bihari Mishra, reported in (1998) 7 SCC 84 and Union of India v. Mohd. Ramzan Khan reported in (1991) 1 SCC 588 observed that principles of natural justice would require that a copy of the enquiry report be supplied to the petitioner so that none be condemned unheard.

8. The impugned order of demotion, dated 21.02.2007, passed by the Deputy Inspector General of Police, Central Range, Patna passed in appeal by the Inspector General of Police, Central Range, Patna as well a order passed by disciplinary authority are not sustainable in law, and are accordingly set aside.

9. As the petitioner has already retired from service, the proceeding can continue under Rule 43 (b) of the Bihar Pension Rules from the stage of forwarding a copy of the enquiry report and issuance of second show-cause. It is expected that the disciplinary authority would conclude the proceeding within a period of six months from the date of receipt of a copy of this order.

10. This application stands disposed of.

(Samarendra Pratap Singh, J.)

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