

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11377 of 2008

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Tarkeshwar Nath Roy son of Sri Ram Narayan Roy, permanent resident of Village and P.O. Pipra, P.S. Karagahar, District Rohtas (Sasaram) and presently residing at Anandpur, Home Guard Centre, Bihta, P.S. Bihta, District Patna.

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.S. Pradhan, Sr. Advocate
 Mr. Yogendra Kumar
 Mr. Dr.Mrityunjay Kr.Gautam
 Mr. Ram Naresh Roy
 Mr. Manish Kumar

For the Respondent/s : Mr. Anjani Kumar, AAG 7

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

4 11-01-2016 The petitioner seeks quashing of the order, dated 30.1.2008 passed by the Deputy Commandant General, Bihar Home Guards, Patna (Annexure-10) dismissing him from service which order was affirmed in appeal by order dated 3.7.2008 passed by the Additional Commandant General, as contained in Annexure-11.

The fact of the case in short is that the petitioner was appointed on the post of Havildar Clerk, Bihar Home Guards on 17.6.1974. He was subsequently promoted to the post of Jamadar Head Clerk in the year 1983. He was further promoted to the post of Company Commander in the year 1994. In October, 1996 he was transferred in the same capacity from Katihar to Bettiah



where he remained till January, 2001. On 31.1.2001 he was posted at Patna on the post of Company Commandeer. In the year 2002, the Union made a complaint against District Commandant Shri Rana Amrendra Kumar Deepak for not distributing the deputation allowance for election work performed by Homeguards in 1999 Parliamentary election. An enquiry was conducted in which the blame came at the door of the petitioner. In the internal enquiry, it transpired that a sum of Rs.5,80,547.00 was handed over to the petitioner in presence of the District Commandant Shri Rana Amrendra Kumar Deepak. The petitioner is said to have put his signature as a proof of receipt of the money. The petitioner was departmentally proceeded against the said charge and some more ancillary charges totaling four in numbers. A copy of the charge sheet dated 5.6.2003 is contained in Annexure-4.

Both the petitioner as well as the department examined witnesses in support of their cases. On conclusion of the enquiry, the Inquiry Officer recorded partial finding of guilt against the petitioner so far as Charge No.1 is concerned and complete guilt so far as other three charges are concerned. The disciplinary authority while forwarding a copy of the enquiry report sought the petitioner's response to the adverse findings recorded in the enquiry. A copy of the second show cause notice dated 28.12.2007



is contained in Annexure-8. The petitioner filed his show cause reply (Annexure-9). The disciplinary authority not being satisfied with the petitioner's explanation, dismissed him from service. Being aggrieved by the findings of the inquiry officer, the petitioner filed an appeal before the inspector General cum Additional Commandant General, respondent No.4. The Appellate Authority not being satisfied with the explanation offered by the petitioner, too dismissed the appeal.

The petitioner submits that only 24 hours time was given to him to examine the left over four witnesses. The order passed by the Appellate Authority is cryptic in nature. In fact he received cash box which fell short by Rs.3 lacs.

On the other hand, learned Additional Advocate General submits that the petitioner in fact received cash box with entire sum of Rs.5,80,547/- on 5.6.2002 in presence of the District Commandant. He submits that the petitioner in support of the aforesaid fact has endorsed the receipt which is not denied. The allegation that no sufficient time was given to him to examine his witnesses is also not correct. Initially one month time was granted to the petitioner to produce his witnesses, but only after 28-29 days could submit a list of witnesses and sought time which was again granted. Thereafter he was able to examine only three



witnesses and thus direction was given to examine rest of the witnesses within 24 hours time. He submits that the petitioner has acknowledged his receipt of a sum of Rs.5,80,547.00. The other plea that the Appellate Authority has not passed order does not convey any weight.

I have heard counsel for the parties.

I find that the order of the Appellate Authority is non-speaking order. It is relevant to state herein that the Appellate Authority is a final Court of facts and law. Unless and until the order is speaking order, the scope of judicial review of such order, if so challenged, becomes redundant in absence of ground on which the Appellate Authority has disposed of the appeal. Learned State counsel states that the petitioner has not preferred statutory memorial against the Appellate Order provided under Rule 8(5)(iii) of the Police Manual.

As the Appellate order is not speaking order, no purpose would be served by relegating the petitioner to the remedy of memorial under rule 8(5)(iii) of the Police Manual after 8-10 years.

On perusal of the materials on record, I find that there has been no impropriety in conducting the departmental proceeding. I find no violation of principle of natural justice. However, I find

that the order passed by the Appellate Authority is not speaking order and as such is not sustainable in law. The order passed by the Appellate Authority is, accordingly, set aside and the matter is remitted to the authorities for fresh consideration in accordance with law with liberty to consider the quantum of punishment.

In the result, this writ application is partly allowed to the extent indicated above.

(Samarendra Pratap Singh, J)

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