

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13981 of 2008

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Girish Kr., Son of Sri Kailash Prasad Mandal, Resident of Village – Arajpur, P.S. –
Chausa, District – Madhepura.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director General of Police-cum-Inspector General of Police, Bihar, Patna.
3. The Inspector General of Police Darbhanga Zone, Darbhanga.
4. The Deputy Inspector General of Police, Purnia Range, Purnia.
5. The Superintendent of Police, Kisanganj.
6. Sub-Divisional Officer of Police, Kisanganj-cum-Conducting Officer,
Departmental Enquiry.

.... Respondents

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Appearance :

For the Petitioner	: Mr. B.P. Pandey, Sr. Advocate. Mr. Jagannath Singh, Advocate. Mr. Aakash, Advocate. Mr. Nirbhay Tiwary, Advocate.
For the Respondents	: Mr. Anil Kr. Verma, AC to AAG-9.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 16-02-2017

Heard both sides.

2. The petitioner by filing this writ petition seeks quashing of the order of removal from his service as contained in Memo No. 1307 dated 06.12.2006 passed by the Superintendent of Police, Kishanganj with a direction that the petitioner would not get anything save and except the subsistence allowance during the period of his suspension as contained in Annexure-7. The petitioner further seeks quashing of order passed by the Deputy Inspector General of Police dismissing the appeal and confirming the order of removal of the petitioner from service as contained in Memo No. 835 dated



03.08.2007 contained in Annexure-8 and the order passed by the Director General of Police as contained in Memo No. 727 dated 03.07.2008 Annexure-9.

3. The petitioner was duly appointed on the post of constable in Bihar Police. Memo No. 780 dated 09.07.2006 was issued from the office of Superintendent of Police, Kishanganj asking the petitioner to show cause as to why a departmental proceeding be not initiated against him for not giving information with respect to his being accused in Chausa P.S. Case No. 64 of 1994 dated 11.08.1994 registered under Sections 302, 307 and other Sections of the Indian Penal Code and section 27 of the Arms Act in which charge sheet was also submitted on 29.10.1994 vide Charge Sheet No. 75 of 1994.

4. The petitioner was put under suspension vide Order No. 709/06 contemplating departmental proceeding. A departmental proceeding was held on charge of indiscipline, forgery, negligence and cheating which are not befitting for a constable. After departmental enquiry, the disciplinary authority removed the petitioner from his service by order dated 06.12.2006 as contained in Memo No. 1307. The Deputy Inspector General of Police also dismissed the appeal of the petitioner on same and similar allegations without considering the grounds taken by the petitioner and similar is the fate of the memorials as the Deputy Inspector General of Police



without assigning any reason confirmed the order of dismissal of the service of the petitioner.

5. Shri B.P. Pandey, learned senior counsel for the petitioner submits that a departmental proceeding was ordered to be held against the petitioner on different grounds but no presenting officer was appointed. The enquiry officer, himself, knew the work of presenting officer and thereby the report of the enquiry officer carries elements of bias in a departmental proceeding. The department has to prove the charges against the delinquent and in absence of appointment of the presenting officer the enquiry officer himself assume the work of presenting officer and thereby the departmental proceeding initiated. It has been held by a Single Bench of this Court in case of Panchanand Kumar vs. Bihar State Electricity Board & Ors. reported in 1996 BLJ (1) 501 and also by a Division Bench of this Court in case of Narayan Prasad Sah vs. The Union of India & Ors. reported in 2008 (2) PLJR 581 in case of Narain Pd. Singh vs. Union of India and Others the Court has held as follows:

4. In that view of the matter, the mere fact that a vigilance charge was levelled against the delinquent officer as a result of using a decoy by itself is no answer to the petitioner's right to have a fair enquiry before he is found guilty of the charges levelled against him and is punished. The reasons that the charges are grave by itself is not enough that an enquiry tainted with bias should be allowed to be sustained. From the record it also appears that the disciplinary authority has acted without application of mind having



assumed that all the charges against the delinquent have been proved notwithstanding the fact that the Enquiry Officer has only found the first two charges proved, and found that third charge is not proved.

6. In case of Panchanand Kumar vs. Bihar State Electricity Board & Ors. reported in 1996 BLJ (1) 501, the Court has held as follows:

11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of nature justice. In this connection, this Court is reminded of the observation of the Supreme Court in the case of D.K. Yadav v. J.M.A. Industries Limited reported in (1993) 3 S.C.C. 259. In the said judgment of D.K. Yadav (supra) the learned Judges of the Hon'ble Supreme Court has said that in a matter relating to dismissal from service the employee concerned is visited with civil consequences and as such the same amounts to deprivation of right of livelihood guaranteed under Article 21 of the Constitution of India. In the matter of Infliction of penalty of dismissal/termination, the procedure which is to be applied must be just, fair and reasonable. In the instant case, this Court is of the view that the procedure which has been applied by the enquiry officer in



coming to his finding is neither just nor fair nor is the same reasonable. As such this Court cannot approve the same. Even though it is well settled that technicalities of rules of evidence are not applicable to a departmental proceeding and this has also been settled by the Supreme Court as far back as in 1964 in its Constitution Bench judgment in the case of Union of India v. H.C. Goel reported in A.I.R. 1964 S.C. page 364 in paragraph 27 that the technical rules which govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trial as to disciplinary enquiries held under the statutory rules.

12. In the instant case it is not in dispute that such disciplinary proceeding held against the Petitioner has been held in accordance with the provisions of Rule 166 of the Board's Miscellaneous Rules which has been adopted by the said Board as has been stated by the learned Counsel for the Respondents. Therefore, in the instant case the enquiry has also been held under the rules which are statutory in nature. Therefore, the aforesaid observation of the Supreme Court applies in this case with full force. Apart from that this Court finds that the decision of the appellate authority is wholly impermissible inasmuch as while passing its order, the appellate authority has not acted with due diligence and proper application of mind and the order does not show that there was any consideration of the relevant materials by the appellate authority while passing the order. Therefore, the order of the appellate authority also cannot be sustained in view of the pronouncement of law in the case of Ram Chander v. Union of India and Ors. reported in (1986) 3 S.C.C. 103.

7. Learned counsel for the State however submitted that the petitioner has not been able to show that due to non-appointment of presenting officer any prejudice is caused to the delinquent. The



delinquent has been given full opportunity to present his case, even in the appointment letter it is mentioned that the appointment shall be subject to verification of police report. Learned counsel for the State also submits that similar question is pending before Supreme Court in Civil Appeal No. 5671/12.

8. Having considered the submissions of both sides I find that the petitioner was appointed in the year 1998. After eight years of service as a constable in Bihar Police, show cause was issued to the petitioner asking him to explain as he has suppressed the facts of a criminal case pending against him. After perusing the show cause of the petitioner, the disciplinary authority put the petitioner under suspension contemplating departmental enquiry on the charges of forgery, negligence, dereliction of duty and cheating but no presenting officer was deputed on behalf of the department to present the case of the department. The enquiry officer, himself, assumed the duty of the presenting officer and, therefore, in this view of the fact, the report of the enquiry officer cannot be said to be impartial. The enquiry officer in such circumstances carries elements of biasness and the report as such is vitiated as also held by a Division Bench of this Court as well as a Single Bench in case of **Narayan Prasad Sah vs. The Union of India & Ors.** reported in **2008 (2) PLJR 581**, therefore, I find that the order contained in Memo No. 1307 dated 06.12.2006 (Annexure-7),



Memo No. 835 dated 03.08.2007 (Annexure-8) and Memo No. 727 dated 03.07.2008 (Annexure-9) are not sustainable in the eye of law.

9. The orders contained in Memo No. 1307 dated 06.12.2006 (Annexure-7), Memo No. 835 dated 03.08.2007 (Annexure-8) and Memo No. 727 dated 03.07.2008 (Annexure-9) are set aside. The writ petition is accordingly allowed. The matter is relegated to the disciplinary authority to hold enquiry afresh after appointing presenting officer and proceed in accordance with law.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2017
Transmission Date	

