

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18195 of 2008

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Gajendra Kumar s/o Shri Fud Narayan Yadav, r/v- Gardhia, P.O. & P.S. –
Kumarkhand and District - Madhepura

.... Petitioner/s

Versus

1. State of Bihar
2. Director General of Police, Bihar Patna
3. Deputy Inspector General of Police, Munger
4. Superintendent of Police, Begusarai
5. Sergeant Major, Police Headquarters, District - Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv.
Mr. Durgesh Kumar, Adv.

For the Respondent/s : Mr. (AAG5)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 06-02-2017

Heard both sides.

The petitioner by this writ petition seeks quashing of the order, as contained in Begusarai Zila Order No. 1968/2006 issued by the Superintendent of Police, Begusarai, as contained in Memo No. 6971/confidential dated 18th October, 2006 (Annexure-6) by which the service of the petitioner has been terminated. The petitioner further seeks quashing of the order passed in appeal, as contained in Memo No. 990/Sa. Sha. dated 04.05.2007 (Annexure-7) issued by Deputy Inspector General of Police, Munger Division, Munger and the order passed on memorials of the petitioner by the Director General of Police, Bihar, Patna, as contained in Memo No. 4089/P-2 dated 28th August, 2008 (Annexure-8).

The brief facts which are relevant for the disposal of this



writ petition are that the petitioner was a Constable. He was put under suspension and proceeded departmentally for his ill-treatment with the Sergeant Major and other charges (Annexure-1). The petitioner appeared and filed his show-cause. After conclusion of the departmental enquiry, the Enquiry Conducting Officer submitted report to the Disciplinary Authority. Disciplinary Authority vide order, as contained in Memo No. 6557 dated 29.09.2006 (Annexure-4) served second show-cause notice to the petitioner to show why he be not removed from the service. Consequent thereupon, Annexure-6 is issued, terminating the service of the petitioner.

Learned counsel for the petitioner assailed the order of dismissal and its confirmation on the ground besides others, that the second show-cause notice issued to the petitioner itself shows that the Disciplinary Authority was bias and pre-occupied, as showed his biasness by stating the punishment before considering the show-cause of the petitioner. The order does not show that the disciplinary authority at all consider the show-cause of the petitioner and the same sans reasoning and thus violative of natural justice not sustainable.

Learned counsel for the State submitted that the Disciplinary Authority was not at all prejudiced. From perusal of Annexure -4 on the face of it, appears that show-cause notice was issued on the point that why the delinquent be not dismissed from the service. The charges against the petitioner are that he manhandled the



Sergeant Major and also refused to do the duty of Guard, but the second show-cause is composite one and the contents disclosed that the Disciplinary Authority has prejudged the case of the delinquent before perusing his show-cause and the termination appears to be a mere formality.

Having considered the rival submission of the parties and on perusal of the show-cause and orders of termination, it is evident that the Disciplinary Authority expressed his intention in the notice about the punishment to be inflicted. Orders do not show that the show-cause of the petitioner was at all considered and order sans reasoning, thus, violative of Principle of natural justice and not legally sustainable.

Accordingly, the order dated 18.10.2006, as contained in Memo No. 6971 (Annexure-6), order dated 04.05.2007, as contained Memo No. 990/Sa. Sha. (Annexure-7) and order dated 28.08.2008 , as contained in Memo No. 4089/P-2 (Annexure-8) are set aside. The writ petition is allowed.

(Prabhat Kumar Jha, J.)

Vinita/-

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

