

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8984 of 2012

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Mithlesh Kumar Singh Son Of Late Yugeshwar Singh Resident Of Village -
Saidanpur, P.O.- Nandlalbagh, P.S.- Fatuha, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Government Of Bihar, Patna
3. The Deputy Inspector General Of Police, Purnea Division, Purnea
4. The Senior Superintendent Of Police, Patna
5. The Superintendent Of Police, Katihar
6. The Sarjant Major New Police Line, Patna
7. The Sargent Major Police Centre, Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Pd. Singh, Sr. Adv.
Mr. Mukesh Kumar Singh, Adv.
For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG-10
Mr. Parijat Saurav, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-12-2017

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

In this case, the petitioner has challenged the order of
punishment dated 13.8.2006 passed by the Superintendent of Police,
Katihar, whereby and whereunder, he was dismissed from service and
directed that no payment will be made for the period of suspension
save and except payment of sustenance amount and the period spent
will be adjusted against the earned leave.

An appeal was filed before the Deputy Inspector



General of Police, Purnea who, vide order dated 4.10.2007, rejected the appeal of the petitioner, thereby, converted the order to removal from service and the same has been affirmed in the Memorial vide order dated 25.8.2008 passed by the Director General of Police, Government of Bihar and the Memorial was also rejected.

The petitioner was working as a Constable, in course of general election, 2005, he was deputed as a member of Static Party No. 192, placed at Booth No. 13 but, he got over intoxicated by drinking wine and became unconscious, was found in unconscious condition along with the rifle, cartridge and Rs. 125/-, on receipt of the information, some of the Constables picked him up from there along with the arms and cartridge and brought to the Senior S.P. Office, Patna, on account of over doze of the liquor, he could not discharge the duty during the election period, a proceeding was initiated against him and finally has been dismissed from service, the order of dismissal was converted to removal by the appellate authority which remained affirmed up to the memorial stage.

Learned counsel for the petitioner has submitted that proper procedure was not followed as the petitioner was not given proper notice to participate in the enquiry and to cross examine the witnesses, ex-parte evidences were recorded. It has further been submitted that while conducting the proceeding, the Enquiry Officer



did not follow the procedure as the proceeding conducted under under Rule 17 of the Bihar C.C.S. Rules, 2005 and specially Clause-6 of the Rule. He has given certain names of the defence witnesses who were not brought for examination in his favour and the entire proceeding was completely eyewash and completely farce and, inasmuch as, save and except the statement of certain constables, no substantial material has been brought to connect the petitioner of taking wine during the election period and he has taken a plea of defence that he had a stomach pain and was taking rest and he slept. He has further submitted that for his treatment, he has visited to the hospital in O.P.D. Further plea has been taken that his urine and blood was not tested to confirm intoxication of the petitioner, mere statement or allegation cannot take shape of proof.

The original record has been produced before this Court for perusal, on perusal of the same, it appears that certain Constable has been examined as a witness for the prosecution but those persons were not cross-examined by the petitioner as he was not informed properly even though he has made a request for cross-examination but that was not accepted.

The departmental enquiry requires should be fair and transparent, fair opportunity should be given to the delinquent. Accordingly, the petitioner must also have been given an opportunity



to cross-examine the witnesses and produce his own witness. The enquiry is not a mere formality but, an exercise to arrive to a proper finding with regard to allegation made against the delinquent. That can only be properly arrived when the delinquent is given proper opportunity to cross-examine, those evidences can be made basis for imposing penalty against the delinquent.

In such view of the matter, the order impugned cannot be sustained in law and, accordingly, the orders dated 13.8.2006 passed by the Superintendent of Police, Katihar, order dated 4.10.2007 passed by the Deputy Inspector General of Police, Purnea Range Purnea and the order dated 25.8.2008 passed by the Director General of Police, Government of Bihar are quashed. The matter is remanded back. As has been informed that the copy of the deposition has already been served upon the petitioner, let all the persons who have deposed against the petitioner should be produced before the Enquiry Officer. The petitioner will be at liberty to cross-examine the witnesses and the petitioner, if so advised, will also be at liberty to produce his oral and documentary evidence in respect of his defence and, after following the proper procedure, the Authority will take decision in accordance with law. The entire process must be completed within a period of six months from the date of receipt/production of a copy of this order. This Court also directs the



petitioner to cooperate in the disposal of the proceeding.

Let the petitioner should appear before the Superintendent of Police, Katihar on or before 22.01.2018.

The entire salary will be subject to the result of the proceeding.

In the result, the present writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2018
Transmission Date	NA

