

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1268 of 2011
IN
Civil Writ Jurisdiction Case No. 63 of 2007

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Lalan Prasad Singh, S/O Shri Bhairo Nath Singh R/O:-Village-Chatar, P.S.-
Barhara, District-Bhojpur, At Present:-Housing Board Colony, Sector No.-III,
Block No.-8, Qr. No. 43, P.S.-Agamkuan, District-Patna.

.... Appellant/s

Versus

1. The State of Bihar through The Special Secretary, Home (police), Secretariat,
Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Patna Range, Patna.
4. The Senior Superintendent of Police, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Awadhesh Singh, Advocate
For the State : Mr. Ravi Ranjan, AC to SC-22

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-09-2017

Seeking exception to an order dated 07.07.2011
passed by the Writ Court in Civil Writ Jurisdiction Case No. 63 of
2007, this appeal under Clause 10 of the Letters Patent.

The petitioner was working as Assistant Sub-
Inspector and at the relevant time in the year 2006 was posted in the
Patna District Police Control Room when on account of the fact that



he has committed a misconduct, a charge-sheet was issued to him, a Departmental Enquiry conducted in accordance to the provisions of the Bihar Government Servants (classification, control & appeal) Rules, 2005 and vide order Annexure-6 dated 09.01.2006, he was reverted to the post of Constable for the period of three years. The appeal having been filed by the petitioner has been dismissed, the writ petition was filed and the learned Writ Court having upheld the punishment order, this appeal under Clause-10 of the Letters Patent.

Two grounds have been canvassed before us in support of the appeal. The first was that as contemplated under Rule 18(iii), while issuing the second show cause notice to the petitioner the enquiry report was not supplied to the petitioner and therefore there being statutory violation, the entire action stands vitiated. The second ground canvassed was that even though the entire allegations levelled in the charge-sheet are accepted to be correct and the evidence recorded in the enquiry report are accepted in its totality, the only allegation proved against the petitioner is that he gave his personal motor cycle on the date of the incidence to his friend Raju @ Syed Imran who had come from the village who used the motorcycle for committing an offence under Section 386 of the Indian Penal code for which Pirbahore P.S. Case No. 19 of 2001 was registered on the complaint of one Pappu Soni.



Learned counsel argues that mere giving of personal motorcycle to a friend is not a misconduct for which departmental action could be taken.

Even though learned counsel for the State tried to refuse the aforesaid contention and by inviting our attention to the findings recorded by this Court in para 7 tried to argue that none supply of the enquiry report to the petitioner has not caused any prejudice to the petitioner and in spite of the same, without any objection the petitioner has submitted his reply to the second show cause notice, the inadvertence into the matter is not called for and therefore, he prays for dismissal of the appeal.

Rule 18(iii) of the Rules of 2005 contemplates that after receipt of the enquiry report, the Disciplinary Authority shall forward a copy of the enquiry report along with its findings to the delinquent employee who shall thereafter submit his written statement to the Disciplinary Authority within 60 days. Admittedly this is the statutory requirement contemplated under the Rule and in the present case, this rule has been violated. The learned Writ Court has dealt only on account of the fact that no prejudice was caused to the petitioner on account of failure to serve a copy of the enquiry report.

In our considered view, this finding recorded and the principles laid down by the learned Writ Court is contrary to the



law laid down by the Supreme Court in various cases including the case of *S.K.Sharma versus State bank of Patiala reported in AIR 1996 SC 1699*. In the aforesaid case, learned Supreme Court has classified procedural irregularities in conduct of the departmental enquiries into two categories. The first categories are the cases where mandatory provisions are violated and the second categories are the cases where non-statutory provisions are violated and there is a breach of the principles of natural justice. As far as first category is concerned, learned Supreme Court holds that violation of mandatory provision is fatal of the departmental enquiry and under law, a prejudice is deemed to have been caused, and, therefore, in a case where statutory provision is violated, prejudice is deemed to have been caused and the enquiry stands vitiated. It is only in the second category of cases where there being no statutory rule, applying the principles of nature justice, rules of nature justice has to be followed by considering what is the prejudice caused due to the breach and thereafter a decision taken.

In the present case, there is violation of a mandatory or statutory rules, and, therefore, it is a case where violation of mandatory provision would result in prejudice being deemed to have been caused and the entire proceeding stands vitiated for the same. That being so, the petition has to be allowed on this



ground alone.

That apart, in this case the allegation against the petitioner is that his motorcycle was used for commission of an offence by Sri. Raju @ Syed Imran. The petitioner has not committed the offence, on the contrary he had only given his personal motorcycle to his friend who is said to have committed the offence. The act of giving ones' personal belonging like a motorcycle to a friend cannot be termed or will not fall within the definition of "misconduct" with regard to a contract of service between the employee and the employer. The act of the petitioner in giving his motor cycle to his friend cannot be construed to be a misconduct by any stretch of imagination, and, therefore, the impugned action taken is also unsustainable on account of the aforesaid fact. There is no allegation against the petitioner that he was instrumental in helping Raju @ Syed Imran in committing the offence. Even the Enquiry Officer in his enquiry report has found that petitioner has only given his personal motorcycle to the accused person who committed the offence.

That being the position, we are of the considered view that mere giving of his personal belonging to a person cannot be construed to be a misconduct for which action should be taken. Learned Writ Court having failed to consider this vital aspect of the issue while rejecting the writ petition, we have no option but to allow



this appeal, quash the order passed by the Writ Court, the Disciplinary Authority and the Appellate Authority. All the consequential benefits accruing to the petitioner by virtue of the same is granted.

Accordingly, the appeal stands allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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