

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15044 of 2014

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1. Ajay Sharma @ Ajay Kumar s/o Late Dinesh Sharma r/o village- Tineri, P.O.-
Nadaul, Police Station- Massaurhi, District- Patna Petitioner

Versus

1. The Director General of Police, Bihar, Patna
2. Inspector General of Police, Magadh Zone at Gaya
3. Superintendent of Police at Jehanabad Respondents

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Appearance :

For the Petitioner : M/S Sanjay Singh & Ajay Kumar Tiwary, Advs.

For the Respondents : Mr. Anwar Kari, AC to GP X

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 03-10-2017

Heard both sides.

2. The petitioner, herein, seeks quashing of the district order no. 648 of 2013, as contained in Memo No. 1022, dated 27.03.2013, passed by the Superintendent of Police, Jehanabad, by which the petitioner has been terminated from his service with effect from 26.03.2013. The petitioner also seeks quashing of the appellate order, dated 22.04.2014, as contained in Memo No. 1590, the order of the Director General of Police, by which the memorial of the petitioner has been dismissed.

3. The brief facts is that the petitioner was posted as Constable in Special Task Force, Jehanabad. The petitioner was charged that he having been entrusted the responsibility to collect information to facilitate the arrest of one Pappu Sharma, who was accused in Jehanabad P.S. Case No. 145 of 2012, dated 20.04.2012, registered under Sections 414 of the Indian Penal Code and 25, 26 of the 35 of the Arms Act, but, secret information was received that the



petitioner took Rs.50,000/- from Pappu Sharma and protected him from his arrest. The enquiry officer submitted reports and did not find the charge proved against the petitioner, but, the disciplinary authority differing with the findings of the enquiry officer dismissed the petitioner from his service with effect from 26.03.2013. The appeal and memorials, filed by the petitioner were also dismissed.

4. Mr. Sanjay Singh, learned counsel appearing for the petitioner, has submitted that the enquiry was held on allegation that the petitioner came in collusion with Pappu Sharma, a criminal, and took Rs.50,000/- from him in order to save him from being arrested.

5. The disciplinary authority produced three witnesses, namely, Ashok Kumar, the then Writer of Confidential Section, Ashraf Hussain Khan, Constable no. 578, and Sunil Kumar, Driver Constable no. 561, but, all the three witnesses, who were examined during the course of departmental enquiry, did not support the allegation in order to prove the charge against the petitioner. The enquiry officer did not find the petitioner guilty, but, the disciplinary authority adopted a strange procedure sans any statutory rules and upon receipt of the enquiry report, took the statement of all the three witnesses, namely, Ashok Kumar, Ashraf Husain Khan and Sunil Kumar in absence of the petitioner. On the basis of their statements made before the disciplinary authority, the disciplinary authority dismissed the petitioner from his service. It is, further, submitted that the disciplinary authority did not supply the enquiry report to the petitioner nor asked the petitioner to show cause. The disciplinary authority also did not submit his point of



difference asking the petitioner to show cause. Therefore, the order of punishment or dismissal of the petitioner is illegal and not sustainable. Consequently, the appellate authority as well as the Director General of Police without giving any reasons dismissed the appeal and memorials of the petitioner and, therefore, both the orders suffer from illegality.

6. The learned counsel for the State, on the other hand, combated the submissions of the learned counsel for the petitioner and contended that the order of the disciplinary authority as well as the appellate authority and the Director General of Police do not require any interference.

7. Having considered the submissions of both the parties, I find, on perusal of Annexure 1, itself, that the enquiry officer submitted his report, but, did not find the petitioner guilty of charge. On receipt of the enquiry report, the disciplinary authority, the Superintendent of Police, Jehanabad, took the statements of three witnesses in absence of the petitioner and without giving his point of difference with the enquiry report and without asking any show cause, from the petitioner, dismissed the petitioner from service.

Therefore, on this ground alone, I find that the order of dismissal of the petitioner is violative of principles of natural justice and at the same time the procedure adopted by the Superintendent of Police, Jehanabad, after receiving the report of the enquiry officer, recorded the statements of the witnesses in absence of the petitioner is also foreign to any statutory rules meant for holding departmental enquiry. The appellate order and the order passed in memorial,



confirming the order of punishment, are also illegal.

8. Thus, the writ petition is **allowed**. The district order no. 648 of 2013, as contained in Memo No. 1022, dated 27.03.2013, passed by the Superintendent of Police, Jehanabad, and the consequential orders passed in appeal and memorials are **set aside**.

9. The matter is remitted to the disciplinary authority to pass order afresh in accordance with law.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.10.2017
Transmission Date	N/A

