

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4002 of 2016

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Surendra Prasad Yadav Son of Ram Ayodhya Prasad Yadav R/o Village Nandpur,
P.S.Manjhi, District Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Secretary, Department of Home, Govt. of Bihar, Patna.
3. Director General of Police, Bihar, Patna.
4. Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
5. Superintendent of Police, Sitamarhi.
6. Sub-Divisional Police Officer, Sadar Anumandal, Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Naresh Dikshit, Adv.

For the Respondent/s : Mr. Niraj Kumar, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-03-2017

Heard Mr. Naresh Dikshit, learned counsel appearing for the petitioner and Mr. Niraj Kumar, AC to GA-10, for the State.

With the consent of the parties this writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner has questioned the order bearing Memo No. 2181 dated 20.9.2013 of the Superintendent of Police, Sitamarhi (respondent no.5), whereby his services has been terminated and which order has been affirmed by the appellate authority vide Memo No. 646 dated 5.3.2014 passed by respondent no.4 i.e. Deputy Inspector General of Police, Tirhut Range, Muzaffarpur as well as Memorial of the petitioner has been rejected by respondent no.3,



Director General of Police vide order bearing Memo No. 1636 dated 22.4.2015.

Mr. Naresh Dikshit, learned counsel appearing on behalf of the petitioner, in reference to the provisions underlying Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') has submitted that the copy of the enquiry report was not handed over to the petitioner as mandated under the Rules. He submits that apart from the legal obligation cast upon the disciplinary authority to forward the copy of the enquiry report on the delinquent in terms of the provisions underlying Rule 18 of 'the Rules', the issue raised, stands settled by the judgment of the Apex Court rendered in the case of **Managing Director, ECIL, Hyderabad & ors. vs. B. Karunakar & ors.**, reported in AIR 1994 SC 1074, as reiterated in the judgment rendered in the case of **Punjab National Bank & ors. v. Kunj Behari Mishra**, since reported in AIR 1998 SC 2713, that a delinquent needs to be offered an opportunity to represent on the enquiry report.

Learned counsel in reference to the judgments passed by a Co-ordinate Bench in C.W.J.C.No. 5856/2016 (**Lalan Prasad Yadav v. the State of Bihar & ors.**), C.W.J.C.No. 5623/2016 (**Jay Prakash Yadav v. the State of Bihar & ors.**) and C.W.J.C.No. 14071/2014 (**Imtiyaz Khan v. the State of Bihar & ors.**) has submitted that a



similar issue being posed before a Bench of this Court relating to the same transaction, that the orders of punishment passed in the said cases have been quashed with liberty to the disciplinary authority to proceed in accordance with law, if so advised.

Since the service of the enquiry report is an issue of fact to be supported from the record of the proceedings, that the State Counsel was directed to ascertain the correct position from the records and which has since been produced by the learned State Counsel, who does admit the position that the records do not reflect the service of enquiry report on the petitioner. Rule 824(a) of the Bihar Police Manual, inter alia, adopts the same procedure for conducting disciplinary proceedings as provided under Civil Services (Classification, Control and Appeal) Rules, 1930 and Bihar Sub-ordinate Services (Discipline and Appeal) Rules, 1935 which Rules has since been replaced by 'the Rules' in question. The respondent authorities thus would be bound by the procedure so provided under 'the Rules' and they cannot escape from the obligation.

In view of the uncontested position reflecting from the records of the proceedings where copy of the enquiry report has admittedly not been served on the petitioner, even if the petitioner has responded to the second show cause notice, a mere response by the petitioner to the second show cause notice would not condone the



default committed by the disciplinary authority in view of the statutory stipulations present as well as judgments referred to above.

For the reasons aforementioned, the orders passed by the disciplinary authority bearing Memo No. 2181 dated 20.9.2013, appellate authority bearing Memo No. 646 dated 5.3.2014 and the Director General of Police bearing Memo No. 1636 dated 22.4.2015, as impugned at Annexures 12, 15 and 17 respectively, cannot be upheld and are accordingly quashed and set aside. The matter is remitted to the disciplinary authority, Superintendent of Police, Sitamarhi to proceed afresh but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.04.2017
Transmission Date	NA

