

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17184 of 2013

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Chandeshwar Prasad Yadav, son of Late Inar Yadav, Resident Of Village- Godna
Brahamtoli, P.O & P.S. - Revealganj, District- Saran (Chapra)

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Home,
Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Darbhanga Range, Darbhanga.
4. The Deputy Inspector General of Police, Purnea Range, Purnea.
5. The Superintendent of Police, Katihar, District- Katihar.
6. The S.D.P.O. cum Conducting Officer, Katihar, District- Katihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Nagendra Pd. Yadav No. 1, Advocate

For the Respondents : Mr. S.D. Yadav, AAG 9

Mr. Prem Ranjan Kumar, AC to AAG 9

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-08-2017

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

2. The present writ petition has been filed for quashing
the order of punishment dated 31.07.2011 bearing memo no. 3176
issued by respondent no. 5 (Annexure-15) and consequential appellate
order dated 02.11.2011 bearing memo No. 1286 issued by respondent
no. 4 (Annexure-17 series) whereby a punishment of stoppage of
increment for six months equivalent to one black dot and punishment
of non-payment of amount during the period of suspension except the
subsistence allowance have been imposed upon him pursuant to



departmental proceeding and the period of suspension has been directed to be adjusted against earned leave of the petitioner; and for consequential reliefs.

3. Learned counsel for the petitioner makes a short submission to assail the order of punishment and the appellate order, to the effect that the Enquiry Officer himself has played the role of the Presenting Officer by taking evidence of the witnesses as well as rendering his opinion regarding guilt of the petitioner in relation to the charges, as evident from the impugned orders as well as the enquiry report (Annexure-E to the counter affidavit). It is submitted that this completely vitiates the proceeding in view of the observations of this Court in *Panchanan Kumar Vs. The Bihar State Electricity Board & ors., 1996(1) PLJR 401* which are as follows: -

“Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the



enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice...”

4. Learned counsel for the State is unable to controvert the aforesaid stand of the petitioner.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. As has already been settled in the decision of this Court in the case of *Panchanan Kumar Vs. The Bihar State Electricity Board* (supra), a proceeding stands vitiated where the enquiry officer himself acts as the presenting officer, which is the situation obtaining in the present case as well.

6. The order of punishment dated 31.07.2011 bearing memo no. 3176 issued by respondent no. 5 (Annexure-15) and the appellate order dated 02.11.2011 bearing memo No. 1286 issued by respondent no. 4 (Annexure-17 series) are accordingly set aside with consequential benefits. Needless to say, the respondents shall be at liberty to initiate a fresh proceeding against the petitioner in accordance with law, if so advised.

7. The writ petition accordingly stands allowed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.08.2017
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