

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.3767 of 2013

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Jitendra Prasad Singh @ Jitendra Yadav, Constable No. 2525, S/O Sri Shobh Nath Singh Resident of Village- Karma, Police Station- Kundra, District- Bhabhua.

.... .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner Home (Police) Government of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Inspector General of Police, Patna Zone, Patna.
4. Dy. Inspector General of Police, Central Zone, Patna.
5. Senior Superintendent of Police, Patna.
6. Senior Superintendent of Police, Supaul.
7. Senior Superintendent of Police, Darbhanga.

.... .... Respondents

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#### Appearance :

For the Petitioner : Mr. Surendra Kumar Singh, Sr. Advocate.

: Mr. Praveen Prakash, Advocate.

For the State : Mr. Upendra Pratap Singh, AC to SC-4

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 21-08-2017**

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

2. The present writ petition has been taken up for hearing and disposal out of turn on the request of the petitioner and in view of the order dated 27.02.2013 passed by this Court admitting the case for hearing and directing the same to be listed in the first week of November, 2013 within first ten cases.

3. The prayer in the writ petition is for quashing the order passed in memo no. 149 dated 14.01.2013 (Annexure-12) by the Director General of Police, Bihar, Patna, whereby the petitioner had



been dismissed from service in exercise of powers under Rule 853A of the Police Manual as also the consequent letter in memo no. 746 dated 15.01.2013 (Annexure-13) as well as memo no. 89 dated 17.01.2013 (Annexure-14) for compliance of the dismissal order.

4. The short facts of the case according to the petitioner are that he was charged with extortion of Rs. 20,000/- from an employee of Tata Power Company Limited on 24.08.2004 after stopping the Ambassador Car, in course of which he was apprehended by the Agam Kuan Police Mobile Gypsy and taken into custody and Agam Kuan P.S. Case No. 291 of 2004 under Sections 341, 323, 384 and 34 of the Indian Penal Code was instituted on the written statement of the driver of the said Ambassador car. In the departmental proceeding, an enquiry report was submitted finding the petitioner guilty, on the basis of which an order of punishment was passed on 15.01.2009 (Annexure-4) by which the petitioner was reverted to the pay scale of Rs. 3050/- for two years and his suspension period was converted into half earned leave. An appeal against the punishment order did not find favour with the appellate authority. In the meantime, the petitioner was acquitted in the criminal case in terms of judgment dated 31.03.2009 (Annexure-7). The petitioner then preferred an Appeal Memorial before the Director General of Police, Bihar, Patna in which a show cause for the petitioner's dismissal was issued. After hearing the petitioner, the impugned order dated 14.01.2013 was passed by which he was dismissed from service.



5. Learned counsel for the petitioner raises a short point for consideration at the very outset. It is stated that the enquiry was made without notice to the petitioner and so also the punishment order dated 15.01.2009 (Annexure-4) was passed ex-parte. More significantly it is submitted that the enquiry report does not conform to the principles of natural justice and stands vitiated as such, considering that the informant Satya Narayan Jha of Agam Kuan P.S. Case No. 291 of 2004 was not examined which was crucial to ascertain the veracity of the allegations. Reliance is placed on a decision of the Apex Court in *Hardwari Lal vs. State of U.P. & Others., A.I.R. 2000 Supreme Court 277*.

6. Learned counsel for the respondents appears and opposes the writ petition but however does not controvert the broad facts pleaded on behalf of the petitioner. It is not denied that neither Satya Narayan Jha, the informant of Agam Kuan P.S. Case No. 291 of 2004, nor the alleged victim-employee of Tata Power Company Limited were examined by the inquiry officer.

7. Having heard the parties and on a consideration of the materials on record, this Court finds considerable merit in the submission made on behalf of the petitioner. The decision in *Hardwari Lal's case (supra)* relied upon by the learned counsel for the petitioner involved substantially similar facts as in the present case where a departmental inquiry was initiated against an allegedly inebriated Constable who was dismissed from service after considering the inquiry report submitted, without however examining the complainant



and a witness. The Apex Court observed as follows :

*“3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.*

*4. However, Shri Goel, the learned Addl. Advocate General, State of Uttar Pradesh, has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant.*

*5. In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service.”*



8. This Court has thus no hesitation in holding that the inquiry made against the petitioner without examining the informant Satya Narayan Jha who was the driver of the Ambassador car as well as the employee of Tata Power Company Limited, did not accord with the principles of natural justice and it cannot be said that there was proper inquiry on the basis of which the dismissal order can be sustained. The impugned order dated 14.01.2013 as well as the consequential letters dated 15.01.2013 (Annexure-13) and dated 17.01.2013 (Annexure-14) are accordingly hereby quashed and the writ petition stands allowed.

9. It is made clear that this Court has not considered the merits of the remaining contentions on behalf of the petitioner.

**(Vikash Jain, J)**

Md. Ibrarul/Chandran

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