

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7521 of 2017

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Rakesh Rai Son of Abhimanyu Rai, Resident of Village- Bharauli, Police Station- Narahi, District- Balia (Uttar Pradesh).

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Shahabad Range, Dihri-on- Sone.
4. The Superintendent of Police, Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Prakash

For the Respondent/s : Mr. SHEO SHANKAR PRASAD- SC8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-04-2018

The petitioner herein has filed the present writ petition for quashing the enquiry report dated 17.06.2016, the final order of punishment dated 06.07.2016 and the appellate order dated 18.10.2016.

2. The brief facts of the case are that the petitioner was appointed on the post of constable in Buxar District Force and he submitted his joining on 18.08.2008. While the petitioner was posted at the DIU branch, residence of S.P., Buxar, the petitioner was suspended by an order dated 3.6.2016 and memo of charge was issued to him by an order dated 04.06.2016, whereafter the petitioner had filed his written statement of defence. It appears that the enquiry officer had submitted the enquiry report on 17.06.2016 and a second show cause notice was thereafter issued to the petitioner herein. The



petitioner was then dismissed from service by an order of punishment dated 06.07.2016. The petitioner preferred an appeal which has also been dismissed by an order dated 18.10.2016.

3. The learned counsel for the petitioner has submitted that the short point for consideration is that neither any presenting officer was appointed on behalf of the department for leading the evidence collected against the petitioner herein nor any presenting officer had appeared before the enquiry officer and, in fact, the enquiry officer himself assumed the role of the presenting officer to examine the evidence and hold the petitioner guilty, which is apparent from perusal of the charge sheet and the enquiry report and, in fact, this position has also not been controverted by the learned counsel for the respondents. The learned counsel for the petitioner has referred to a decision of this Court reported in 2004 (4) PLJR 517 [**Rajib Lochan Jha vs. The State of Bihar & Ors.**] to argue that single infirmity is enough to hold the entire proceeding to have been vitiated.

4. I have heard the learned counsel for the parties and I find that it is a well settled law that where the enquiry officer is a person other than the disciplinary authority, then he can act as a delegatee of the disciplinary authority but he cannot be a party to the disciplinary proceeding to assume the role of a presenting officer who represents the department. In this connection, it would be apparent to



refer to the judgments reported in (2010)2 SCC 772, 1996(1) PLJR 402 and 2018(2) PLJR 68.

5. Having regard to the facts and circumstances of the case, since no presenting officer was present in the departmental enquiry to lead or to prove the evidence that was collected against the petitioner, the enquiry officer could not have assumed the role and duty of a presenting officer to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner in absence of the presenting officer. This mandatory procedure could not have been discharged by the enquiry officer himself, therefore, in view of the uncontested circumstances discussed herein above, the entire proceeding beginning from the report of the enquiry officer dated 17.6.2016, to the order of punishment dated 6.7.2016 and the appellate order dated 18.10.2016 cannot be upheld and accordingly are quashed and set aside. The matter is remitted back to the disciplinary authority for concluding the departmental enquiry in accordance with law from the stage of enquiry.

6. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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