

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23577 of 2013

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SUKOMAL MISHRA S/O SRI NAPESHWAR MISHRA RESIDENT OF
TEKAHO MISHRA TOLA, P.O- TEKAHO TOLI, BAZAR, P.S-
PIPRAKAINI, DISTRICT- MOTIHARI.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar.
3. The Additional Director General Of Police, Bihar, Patna.
4. The Deputy Inspector General Of Police, Tirhut Range Muzaffarpur.
5. The Superintendent Of Police, Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Mishra, Adv. Mr. Ajay Kumar, Adv. Mr. Sandhya Sharma, Adv. Mr. Kumr Priyadarshi, Adv.
For the Respondent/s	:	Mr. Raju Giri (GP30)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 21-03-2018

Heard learned counsel for the parties.

This writ petition under Article 226 of Constitution of India has been filed for quashing order dated 27.10.2006 passed by the Superintendent of Police, Vaishali, by which petitioner has been dismissed from services as well as order dated 13.2.2007 passed by Dy. Inspector General of Police who has dismissed the appeal of petitioner and order dated 27.7.2012 passed by Director General of Police by which he has dismissed the memorial preferred by petitioner.

Petitioner was appointed as constable in the District Police Force on 14.5.1999 and while he was posted as Body Guard of



District Magistrate, Vaishali, he was implicated in Vaishali Town P.S. Case No. 253 of 2005 dated 12.5.2005 under Sections 341, 379 and 504 of the Indian Penal Code and he was proceeded departmentally also by the Disciplinary Authority, Superintendent of Police, Vaishali.

A preliminary enquiry was conducted by the S.H.O. in which the allegation of misbehavior was found to be true but allegation with respect to theft or taking out money from the pocket of complainant was not found true as per report submitted vide Memo no. 252/ 2005 dated 14.05.2005. Even in criminal case no charge was framed under Section 379 but charges were framed under Sections 341 and 504 of the Indian Penal Code.

On the basis of enquiry report submitted by the SHO a departmental proceeding was initiated against the petitioner by the Disciplinary Authority i.e. the Superintendent of Police and Memo of charge dated 24.6.2005 was served upon petitioner.

Allegation against petitioner was that in the night of 11.5.2005 he went to wine shop of Sanjay Kumar at Rajendra Chowk and after consuming wine he did not pay the bill and when the shopkeeper demanded money he insulted and ill-behaved with him. He was put under suspension.



The Sub-Divisional Police Officer, Sadar, Hazipur, was appointed enquiry officer and petitioner was asked to submit his explanation to the Memo of charge and petitioner submitted his reply but same was not accepted and departmental proceeding continued against him.

Petitioner requested the Disciplinary Authority as well as enquiry officer to stay departmental proceeding till conclusion of criminal trial as charges in criminal court as well as departmental proceeding are identical and charges are to be established on the basis of same set of evidence but the same was turned down by the authorities.

The enquiry was conducted by the enquiry officer and after completion of enquiry, petitioner was found guilty and enquiry report dated 21.4.2006 was submitted by the enquiry officer to the disciplinary authority.

Petitioner was issued second show cause notice and petitioner submitted his detailed reply but without considering the materials available on record services of the petitioner were dismissed by order dated 27.10.2006 (Annexure-5) passed by the Superintendent of Police. Petitioner preferred appeal before the DIG, Muzaffarpur, but same was also dismissed by the appellate authority.



It has been submitted that during pendency of his Memorial filed before D.G.P. petitioner was acquitted by the criminal court then he submitted a review petition before the D.G.P. to set aside his dismissal order and reinstate him but the same was rejected by the D.G.P. by order dated 12.7.2012.

It has further been submitted that D.I.G., Central Range, Patna, exonerated one Deep Narain Prasad vide District Order No. 7624 of 2009 dated 25.12.2009 and petitioner is also entitled to be exonerated from his punishment as both cases are of similar nature. The petitioner's past records are satisfactory and he was acquitted by Criminal Court on merit.

It is a settled proposition of law that for similar charges there can be simultaneous criminal proceeding as well as departmental proceeding as standard of proof in both proceedings are quite different and unless and until there is order of Court to keep the departmental proceeding under abeyance or there are such rules the Disciplinary Authority is under no obligation to stay the departmental proceeding during pendency of criminal proceeding.

Petitioner cannot get any benefit of acquittal in criminal case unless such acquittal is Hon'ble acquittal. Even in such cases there cannot be automatic reinstatement unless service rules provides as such. In present case, acquittal of petitioner is on benefit of doubt



and it can be one of the consideration in favour of petitioner as he has been acquitted during pendency of his Memorial before D.G.P. and circular issued by State Government also mandates that after acquittal of delinquent by a Court of Law punishment order passed in disciplinary proceeding is to be reviewed.

The Apex Court in para-10 of the case of State Bank of Bikaner and Jaipur vs. Nani Chand Nalwaya since reported in 2011(4) SCC 584 has held as follows:-

“ 10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceeding, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.”

From the perusal of the enquiry report it transpires that in the enquiry proceeding evidence of Raj Kumar Singh, Sub Inspector, was recorded and in his deposition he has stated that petitioner after consuming alcohol from the shop had misbehaved with the shopkeeper and Vaishali Town P.S. Case No. 253 of 2005 dated 12.5.2005 was instituted under Sections 341,



379 and 504 of the Indian Penal Code. Petitioner was suspended and departmental proceeding was initiated against him.

Evidence of shopkeeper Sanjay Kumar was also recorded and in his statement he has stated that Inspector cum Officer in Charge of Hazipur Police Station in his Memo No. 252 of 2005 has stated that by order of Superintendent of Police, Vaishali, petitioner was put under suspension and departmental proceeding was initiated against him.

Witness Inspector of Police cum Officer in Charge Kamal Hasan, did not appear in the enquiry proceeding to prove his report on basis of which disciplinary proceeding against petitioner was initiated and in said report also SHO has disbelieved snatching of money but has only found misbehaviour and abusive language used by petitioner as true. The Enquiry Officer has held that on the basis of deposition of witnesses it is established that on 11.5.2005 in the night he consumed alcohol from the shop of one Sanjay Kumar and when he demanded to pay the Bill he(petitioner) used filthy language and also took out money from his pocket upon which Town P.S. Case No. 253 of 2005 dated 12.5.2005 was registered under Sections 341, 379 and 504 of the Indian Penal Code and thereafter petitioner was put under suspension and departmental proceeding was initiated against him



and on the basis of material adduced during the enquiry proceeding charges were proved and petitioner was held to be irresponsible, indisciplined and incompetent police constable. In the criminal case also charges were framed under Section 341 and 504 of the Indian Penal Code and charge under Section 379 was not framed, as such the finding of enquiry officer that allegation of taking out money from pocket of Sanjay Kumar is proved is erroneous as no such charge was framed against petitioner.

Second show cause notice was issued to the petitioner by the Disciplinary Authority as to why he should not be dismissed from service on the basis of proven charges found by the enquiry officer and thereafter petitioner submitted his reply but without considering the reply, petitioner has been dismissed from service.

In the second show cause to petitioner by the Disciplinary Authority it was stated that why he should not be dismissed from service. At the time of issuance of second show cause no opinion has to be formed by the Disciplinary Authority and opinion is to be made after considering the reply of petitioner filed against enquiry report, and issuing 2nd show cause notice with proposed punishment of dismissal has been found to be violation of natural justice and pre-judging the issue even before considering reply of delinquent as such proceeding stands vitiated at this stage.



The Apex Court in H.P. State Electricity Board Ltd. vs. Mahesh Dahiya since reported in 2017(1) SCC 768 in para-31 has held as follows:-

“31. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the delinquent. The opinion formed by the disciplinary authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.”

In view of discussion as held above the departmental proceeding stands vitiated from the stage of issuance of second show cause notice to the delinquent and as such subsequent proceeding i.e. orders passed by Disciplinary Authority, Appellate Authority as well as Reviewing Authority are not sustainable and accordingly quashed.



Disciplinary Authority will be having the liberty to continue proceeding from the stage of issuance of 2nd show cause.

Before initiation of any fresh proceeding the Disciplinary Authority shall consider the acquittal of petitioner by a Court of Law for same charge. The Disciplinary Authority shall also consider that allegations against petitioner were of misbehaviour and use of filthy language and punishment imposed should be proportionate to nature of misconduct.

In the result, the writ petition is allowed. The orders passed by Disciplinary Authority, Appellate Authority as well as Reviewing Authority are set aside and petitioner is directed to be reinstated in service with all consequential benefits with 50% of back wages within three months from the date of production/receipt of a copy of this order, subject to liberty as granted.

The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

