

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1065 of 2011
IN
Civil Writ Jurisdiction Case No. 9308 of 1997**

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Rajballabh Singh S/O Late Ishwardhari Singh R/O Vill.- Buranpur, Post-Mubarakpur, Distt.- Patna

.... Appellant/s

Versus

1. The State Of Bihar
2. The Deputy Inspector General Of Police, Magadh Range, Gaya, Distt.- Gaya
3. The Superintendent Of Police, Nawada, Distt.- Nawada
4. The Superintendent Of Police, Gumla, Distt.- Gumla
5. Officer In Charge, Gumla Police Station, Distt.- Gumla

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shravan Kumar, Sr, Advocate
Mr. Dinesh Maharaj
For the Respondent/s : Mr. Anjani Kumar, AAG 4
Mr. Amit Kumar, AC to AAG 4

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-03-2018

Seeking exception to an order dated 13th May, 2011 passed by the learned Writ Court in CWJC No. 9308 of 1997 dismissing the writ petition filed by the petitioner-appellant this appeal has been filed under Clause 10 of the Letters Patent.

Petitioner was working in the Police Department as a constable. He was attached to an M.L.A. as his personal body-guard. On account of allegation made with regard to snatching of service revolver provided to the petitioner a complaint was lodged and it was



the case of the petitioner that certain persons tried to commit dacoity and in the process the revolver was snatched. Finding the petitioner to have committed misconduct in the matter of making a false allegation, the departmental enquiry was ordered and thereafter he was dismissed from service. Appeal filed was also dismissed and the matter came before the Writ Court on a challenge made by the appellant.

Apart from raising various grounds one of the contentions of the petitioner was that before imposing the impugned order copy of the enquiry report was never served upon him and no show cause notice along with the enquiry report was submitted to him before the impugned action was taken. It was his case that as the enquiry report was not supplied to him he was prevented from challenging the departmental enquiry and, therefore, the entire enquiry stands vitiated.

The learned Writ Court evaluated this ground in the light of the counter affidavit filed by the respondents and in paragraph-6 of the impugned order recorded the following finding:-

“6. In the counter affidavit filed on behalf of the Superintendent of Police, Gumla at para 7, it has been stated that a letter from Superintendent of Police, Nawada vide his memo no. 3490/R.O. dated 28.11.1996 was received in the office of R.S.M., Gumla and it was endorsed to R.S.I. II Smt. Sneh Lata Toppno for service to the petitioner. As per report of R.S.I. II the said letter was handed over to the petitioner



personally but she could not obtain any receipt from the petitioner in good faith.”

The learned Writ Court rejected the writ petition by holding that the enquiry report was served upon him by Smt. Sneh Lata Toppno. The appellant contends that neither Smt. Sneh Lata Toppno filed any affidavit in support of her contention nor was the appellant given any opportunity to rebut the contention of Smt. Sneh Lata Toppno which could not be done in the absence of any evidence. It is alleged that letter of the Superintendent of Police, Nawada, as indicated in para-6 of the order under challenge, was accepted by the learned Writ Court without there being any affidavit or report submitted by Smt. Sneh Lata Toppno with regard to the averments made by her in her so-called report said to have been submitted. It is argued that in doing so, the learned Writ Court committed a grave error.

Faced with the aforesaid situation, in order to verify as to how and under what manner the show cause notice and enquiry report was served on the appellant, we directed the disciplinary authority to produce the entire enquiry file to verify this fact. We passed the order on 7.9.2017 and thereafter on the request of the learned counsel representing the State the matter was adjourned from time to time and finally the S.P., Nawada and the office of the Deputy Inspector



General of Police, Magadh Range, Gaya, made allegations and counter-allegations to say that the original records filed are not available with them and each was accusing the other as the custodian of the document. Finally, on 13.2.2018, we directed the Sr. S.P., Nawada to remain present with the departmental enquiry proceedings as the S.P. was the custodian of the documents as a disciplinary authority. On 6.3.2018, the Sr. S.P., Nawada filed I.A.No. 1662 of 2018 which goes to show that he was present on 27.2.2018 but the case could not be taken up and he was granted exemption from personal appearance and in his affidavit he indicated that the records of the disciplinary enquiry are neither traceable in his office nor in the office of the D.I.G. and the whereabouts of the records are not available.

That being so, it is a case where the department has miserably failed to establish the fact with regard to supply of the enquiry report on the appellant before taking the impugned action. The entire enquiry report is gone missing and nothing is indicated to us as to how and under what circumstances the records had disappeared. The only material available with regard to service of the enquiry report is the communication of the S.P. Nawada dated 28.11.1996 as indicated in para-6 of the impugned order passed by the learned Writ Court and reproduced hereinabove. Even in this



communication, averments are based on some information said to have been given orally by Smt. Sneha Lata Toppno. Neither any affidavit or report of Smt. Toppno supported by cogent evidence is available on record. That being so it is a case where the department has failed to prove that the enquiry report was served on the petitioner before imposing the punishment. Once there is an action taken against the petitioner even without informing him about the outcome and the finding recorded by the Enquiry Officer, the entire action taken against the petitioner based on such an illegality, cannot be upheld. The learned Writ Court without appreciating the facts in its right perspective and without examining them in accordance with requirement of law has rejected the writ petition and we are unable to approve it.

Accordingly, we allow this appeal, quash the order dated 13th May, 2011 passed in CWJC No. 9308 of 1997, so also the order of punishment and the order of the appellate authority, allow the writ petition and direct for grant of reinstatement and all consequential benefits to the petitioner-appellant. We are informed that the appellant has already attained the age of superannuation in the year 2014 and, therefore, his reinstatement is not possible now. That being the position, it is directed that he be deemed to have served till the age of superannuation and thereafter retired and all his monetary claim



including payment of arrears of salary and post-retirement benefits be settled accordingly within a period of three months from the date of receipt of a certified copy of this judgment.

(Rajendra Menon, CJ)

mr.l./-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
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