

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 9134 of 2013

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Prem Kumar Son Of Late Gurdeo Singh Resident Of Village - Haweli, P.S. - Biharsharif, P.O. - Murrora (Biharsharif), District - Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar through Its Principal Secretary Dept. Of Home (Police) Old Secretariat, Patna
2. The Director General of Police, Govt. Of Bihar, Patna
3. The Inspector General of Police, Patna Zone, Patna
4. The Dy Inspector General of Police Central Range, Patna
5. The Senior Superintendent of Police, Patna
6. The Superintendent of Police, Sheikhpura

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Banwari Sharma, Mohan Kr Singh, Advs
For the S t a t e : Mr Y P Sinha, AAG VII with
Mr Shankar Kumar, AC to AAG VII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 02-08-2018

Heard learned counsel for the petitioner and the respondent-State.

Petitioner is aggrieved by the order of dismissal dated 07.01.2009 issued by the Deputy Inspector General of Police (for brevity, *DIG*), Central Range, Patna. He has also sought quashing of the order dated 25.08.2010 bearing Memo No 1556 issued by the Inspector General of Police (for brevity, *IG*), Patna Range, Patna rejecting his appeal as also the order dated 26.09.2012 of the Director General of Police (for brevity, *DGP*), Bihar confirming the order of



dismissal dated 07.01.2009.

The brief facts giving rise to the instant petition is that while the petitioner was posted as a Constable and assigned duties at Ganga Bridge. On 30.03.1987 he was apprehended by a superior officer who, at that point of time, was in the rank of Senior Superintendent of Police. The allegation was that the petitioner had been apprehended on the Bridge accepting a bribe of Rs 30/- from a truck driver of one truck bearing registration No BRJ – 7967. The order of punishment has been awarded to the petitioner more than 20 years after the said occurrence.

It is submitted by the learned counsel for the petitioner that as far as the proceedings, which were conducted at the place of occurrence itself, the scope of award of punishment was very limited in view of the provisions contained in Rule 828 (c) of the Bihar Police Manual which reads as follows:

“828. *Infliction of major punishments.*-

(c) In case in which, forfeiture of increment is proposed to be an adequate punishment, this may be inflicted without formal enquiry in the form of a proceeding but every such matter shall state clearly : first, the charges against the defaulter; then his answers to each charge, one by one; and lastly, the finding upon each charge of the officer inflicting the punishment. In such cases, the Superintendent need not hold the enquiry himself, nor shall the delinquent have the right to appear before him, but



he has the right to appear before the officer deputed to record the evidence and to take his defence; and such officer, who shall not be below the rank of Inspector, shall come to a clear finding on each charge and shall submit the record with his recommendations to the Superintendent for orders.”

Petitioner has challenged the order of dismissal on the basis of on spot enquiry by submitting that such major punishment of dismissal could not be awarded without subjecting the petitioner to a duly constituted proceeding in accordance with law and merely on the basis of an enquiry on the spot.

On such submissions, the specific query was raised by this Court under order dated 28.06.2018 whether the award of dismissal could be sustained in view of the provisions contained in Rule 828 (c) of the Bihar Police Manual.

Counter affidavit has been filed. The stand of the respondents is that the award of dismissal was not as a result of on spot enquiry at the Ganga Bridge but after issuing a charge memo dated 26.02.1988 upon the petitioner and conducting an enquiry. The enquiry report has also been annexed in the counter affidavit. From bare perusal of the same, it is quite apparent that the Enquiry Officer has recorded that no witness has appeared to support the charges in the proceedings. The findings are based on no evidence and unsustainable in view of the law laid down by the Apex Court in the



case of *Roop Singh Negi –Versus- Punjab National Bank* reported in (2009) 2 Supreme Court Cases 570. From the enquiry report, it is also apparent that there is no Presenting Officer presenting the case of the Department, and Enquiry Officer has assumed the role of the Presenting Officer, which procedural lapse strikes at the root of the matter. Enquiry Officer being quasi judicial authority adjudicating the issue was required to examine the matter as a neutral authority. By arrogating upon himself the role of Presenting Officer, he has not acted fairly. He has presented the case of the Department and himself decided the matter as a Judge in the case. Such action of the Enquiry Officer is in violation of the law as observed in the case of *State of Uttar Pradesh & Others –Versus- Saroj Kumar Sinha* reported in (2010) 2 Supreme Court Cases 772. Both the requirements, which are based upon the principles of natural justice and which are established procedure to be adopted in the proceedings conducted against the delinquent, have, thus, been violated.

The proceedings before the Enquiry Officer (Deputy Superintendent of Police (Traffic) (III), Patna were, thus, contrary to principles of natural justice inasmuch as neither there was a Presenting Officer nor has any witness deposed before the Enquiry Officer to sustain the charges. Other than these two infirmities in procedure, another aspect of the matter is that the proceedings were



conducted after a considerable delay. The enquiry report is dated 16.09.2003 that is about 16 years after the alleged occurrence on 30.03.1987. The findings of the Enquiry Officer are also not based on any evidence and in violation of established procedure which can, by no stretch of imagination, be said to be fair.

As noticed above, the Enquiry Officer, who was performing a quasi judicial function, has also performed the role of Presenting Officer. He has presented the case on behalf of the Department and took a final decision on the same. The action of Enquiry Officer amounts to vitiating the enquiry for want of fairness and for violation of principles of natural justice. The petitioner has, thereafter, submitted to the Disciplinary Authority his second show cause highlighting the aforesaid irregularities before the Disciplinary Authority by a detailed response to second show cause. The same has not been considered and relying upon the proceedings, on spot, as recorded on 30.03.1987, the major punishment of dismissal has been awarded to the petitioner.

The facts of the case in the backdrop of the provisions contained in the Bihar Police Manual, as noticed above, allowed only two options to the authorities. One was to inflict the minor punishment within the scope of Rule 828 (c) of the Bihar Police Manual. For exercising the other option for inflicting major



punishment, a duly constituted proceeding in accordance with law was required to be conducted which, as noticed above from the enquiry report, has been done, but in view of the serious infraction of the Rules of fairness in the proceedings, as notice above, was at best an empty formality. Disciplinary Authority has awarded the major punishment without showing any consideration to the illegal manner in which the proceedings were conducted before the Enquiry Officer are, thus, unsustainable in the eye of law.

The order of punishment dated 07.01.2009 is, therefore, quashed. The appellate order dated 25.08.2010 passed by the IG of Police, Patna Range, Patna as well as the order dated 26.09.2012 of the DGP confirming the order of dismissal are, therefore, unsustainable since the order of dismissal, as noticed above was the product of an illegal exercise undertaken by the Enquiry Officer without any evidence and without any Presenting Officer.

In view of this quashing of the impugned orders, the writ petitioner would be entitled to his consequential benefits.

Learned counsel for the respondent-State submits that the matter may be remanded to the authorities.

Whether at such a belated stage, the respondents have any option as of now to initiate proceeding against the petitioner, otherwise is an issue which they may decide having regard to the law



in this regard.

This Court would, therefore, not express any opinion on the prayer made by the learned counsel for the respondent-State.

In view of the findings and observations hereinabove, the writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.08.2018
Transmission Date	NA

