

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10998 of 2013

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Maheshwar Prasad Verma Son Of Late Karilal Verma R/O Village - Haridaschak,
P.S. Muffasil, Distt. - Khagaria

.... Petitioner

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Old Secretariate,
Patna
2. Director General Of Police Bihar, Patna
3. I.G. Of Police Muzaffarpur Zone, Muzaffarpur
4. D.I.G. Of Police, Tirhut Range, Muzaffarpur
5. S.P. Nalanda
6. S.P. Vaishali At Hazipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Ram Hridy Prasad, Advocate and
Mr. Mrityunjay Kumar, Advocate

For the Respondents : Mrs Binita Singh, SC 28 and
Mr. Nishant Kr.Jha, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 01-08-2018

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

2. The petitioner has been proceeded against under
charge memo dated 03.10.2006 alleging therein that he has been
caught red handed while accepting a bribe of Rs.5000/- for release
of a Bus which he had seized. The petitioner was apprehended red
handed by the then Deputy Inspector General (DIG) of Police,
Tirhuit Range, Muzaffarpur. On the basis of such allegation, charge
memo was served upon the petitioner.

3. The petitioner complained that the exhibits which



were described in the charge memo was not served on him and that the alleged witnesses were examined without fixing the date of examination of witnesses. It is his submission that the examination of witnesses was thus conducted behind his back, and he has been deprived of his vital opportunity to also cross examine the alleged witnesses. The enquiry report is dated 30.7.2007 by the Sub Divisional Police Officer (SDPO), Mahnar addressed to the Superintendent of Police, Vaishali.

4. The petitioner was issued a second show cause notice upon which he has submitted his reply to the second show cause which is Annexure 4 to the writ petition wherein he has specifically raised the issue regarding the copy of exhibits not being made available to him. He has also raised the issue that the witnesses were examined behind his back. Order of the Superintendent of Police, Vaishali thereupon which is dated 11.9.2007 does not show any consideration of this aspect. It has been recorded in the order dated 11.9.2007 that since the petitioner has been caught red handed therefore the case of allegationist is very grave and as such the petitioner has caused embarrassment to the police force. Since the Superintendent of Police, Vaishali who was the Disciplinary Authority considered the gravity of the charges warranting the punishment of dismissal, as per procedure



prescribed under the Bihar Police Manual, he has forwarded the matter to the Deputy Inspector General (DIG) along with his recommendation for petitioner's dismissal. The petitioner was thereafter not given another opportunity by the DIG before issuing order of dismissal seeking petitioner's response to the proposed punishment of dismissal. Petitioner's response has been filed on 19.2.2008 (Annexure 6).

5. Once again the petitioner in paragraphs 6, 8 and 9 of his response has specifically raised the plea regarding the exhibits enumerated in the charge memo not being made available to him. He has also raised the issue of alleged witnesses being examined behind his back by the Enquiry officer without fixing any date. He has specifically raised a grievance that witnesses were examined behind his back therefore he has also been deprived of opportunity to cross examine the witnesses.

6. The aforesaid submissions made on behalf of the petitioner which in the opinion of the court strikes at the root of fairness in the departmental proceedings. It is trite law that the respondents are obliged to make available the copy of the exhibits to the delinquent. It is for this purpose that the exhibits are mentioned in the charge memo which has been issued against the petitioner. The requirement of witnesses deposing in support of the



charges, to be examined in presence of the delinquent, is also a established procedure of fairness in the departmental proceedings. The petitioner's specific assertion that these two requirements have not been fulfilled has not been considered either by Disciplinary authority or by the DIG, Tirhuit Range, Muzaffarpur and no order has been communicated to the petitioner in this respect, without considering these issues raised by the petitioner, the order of dismissal has been communicated to the petitioner by the impugned order dated 4.4.2011 issued under the signature of the Superintendent of Police, Nalanda. The very cryptic consideration communicated in the order dated 9.4.2011, issued by the Superintendent of Police, Nalanda is reproduced herein below:

“संचालन के क्रम में आरोपित का बचाव करने का अवसर संचालन पदाधिकारी द्वारा दिया गया है, जिसका लाभ उठाते हुए अपचारी ने अपना बचाव स्पष्टीकरण दिया है, जिस पर विचारोपरान्त ही संचालन पदाधिकारी ने अपना मंतव्य दिया है, जिसमें अपचारी के विरुद्ध लगाये गये आरोप के लिए दोषी पाये हैं।”

7. Specific plea raised by the petitioner is whether the issues, raised by the petitioner which strike at the root of fairness in the departmental proceedings, are required to be dealt with by the Disciplinary Authority before issuing order of punishment of dismissal to the petitioner. There is no consideration whatsoever nor any reason has been assigned for rejecting the petitioner's claim regarding procedural irregularities and illegalities as noticed herein



above. At this juncture, the Court would consider the judgment of the Division Bench of this Court in case of **Hassan Muzahid Vs. The Bihar State Electricity Board and others**, reported in **2015(4) PLJR 435(HC)** which reiterates the established law regarding requirements of reasons to be recorded by the authorities dealing with such issues.

8. All these issues have again been raised by the petitioner in his appeal filed before the Inspector General of Police, Muzaffarpur Zone, Muzaffarpur. The illegal manner in which the Appellate Authority proceeded while adjudicating upon the vital rights of appeal available to the delinquent and affirming the punishment of dismissal is clear from the appellate order. The appeal of the petitioner has been rejected by order dated 4.2.2012 without considering any of the above noted issues raised by the petitioner. Petitioner's appeal has been rejected without assigning any reason. Because he has not been able to disprove the allegations, petitioner's appeal has been dismissed. Such a reason itself is unsustainable in law as it is established law that it is for the department to bring home the charge on basis of some material on the preponderance of probability.

9. Another illegality and violation of principal of Natural Justice is that the very same officer, who at the point of



time was posted as the Deputy Inspector General of Police and had apprehended the petitioner and had made allegation against him leading to issuance of charge memo against the petitioner, has dealt with and decided the petitioner's case sitting as the Appellate Authority. Order of the Appellate Authority is unsustainable in law as it violates one of basic principles of Natural Justice inasmuch as the authority has acted as a judge in his own cause. Having initiated the proceedings against the petitioner by apprehending him red handed he has decided the appeal against the petitioner, since the very same officer had made the allegation against the petitioner of apprehending him while accepting bribe. The accuser has thus acted as the Appellate Authority to decide the accusation. Such situation, in opinion of this Court gives rise to a reasonable likelihood of bias so as to disqualify the officer from acting as the Appellate Authority and order of the Appellate Authority is thus legally unsustainable as by any stretch of imagination, the appeal of the petitioner can be said to be a fair consideration in view of this grave irregularity/illegality. For the reasons indicated herein above, both the order of punishment dated 4.4.2011 which was communicated to the petitioner under the order of the Superintendent of Police, Nalanda as well as order dated 4.2.2012, passed by the Appellate Authority, i.e., the Inspector General of



Police, Muzaffarpur Zone, Muzaffarpur, are unsustainable in the eye of law and are quashed.

10. Order dated 24.7.2012, affirming order of dismissal and the appellate order, passed by the Director General of Police, Bihar on the memorial filed by the petitioner, thus has no leg to stand as he himself has also failed the test of fairness. The order on the memorial has been passed without considering all these irregularities and illegalities and procedural violation. Order dated 24.7.2012 is also quashed.

11. The writ petition is allowed.

12. This order, however, will not come in the way of the respondent authorities in proceeding against the petitioner after ensuring compliance of the procedural fairness as may be permitted in accordance with law.

(Madhuresh Prasad, J)

Shashi.

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