

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13943 of 2010

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Bhola Choudhary S/O Late Ramchandra Choudhary R/O Vill.- Harigaon, P.S.
Belaganj, Distt.- Gaya

... .. Petitioner/S

Versus

1. The State Of Bihar Through The Home Secretary Government Of Bihar, Patna
2. The Home Commissioner (POLICE) Government Of Bihar, Patna
3. The Director General Of Police, Government Of Bihar, Patna
4. The Inspector General Of Police, Patna Division, Patna
5. The Deputy Inspector General Of Police, Magadh Range, Gaya
6. The Deputy Inspector General Of Police, Aurangabad Range, Aurangabad
7. The Superintendent Of Police, Jehanabad
8. The Inspector Of Police-Cum-Conducting Officer, Ghoshi Anchal, Jehanabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Nath Dubey
For the Respondent/s : Mr. (SC17)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 09-05-2018

Heard learned counsel for the parties.

In the present case, the petitioner is seeking relief for quashing the order dated 3.7.2010 (Annexure-1) passed by the Superintendent of Police, Jehanabad dismissing the petitioner from the service.

This writ application has been filed by the petitioner having submitted that there is an inherent defect in the departmental proceeding, requires interference by this court.

The short fact of the present case is that the petitioner was a Police Constable, was posted at Jehanabad in the year 1989, was undergoing training in Training Centre, B.M.P. 2, Dehri, Dist.



Rohtas. On 9.5.1988, the petitioner had gone for leave for four days but, remained absent for 42 days, for that a departmental proceeding was initiated by issuing a charge-sheet to the petitioner. The petitioner gave his explanation that after four days, he remained absent on account of his illness as well as on account of death of his father. Second show-cause was issued but, before the maturity of time of giving explanation, the petitioner was dismissed from service which compelled the petitioner to approach this Court in C.W.J.C. No. 13374 of 2001, the writ application was allowed, this Court vide order dated 23.11.2007 set aside the order of punishment with a direction to the authority to issue fresh notice to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order fixing the date of filing the reply to the same and granting reasonable opportunity of hearing and the matter would proceed afresh from that stage. Further held that this Court expects that the disciplinary proceeding would finally concluded within a maximum period of six months directed the petitioner cooperates in the early disposal of the proceeding. Instead of proceeding from that stage, the Superintendent of Police has initiated a fresh enquiry which is apparent from the letter dated 18.12.2007 giving a direction for holding a fresh enquiry and Dinesh Kumar Singh, Police Inspector,



Ghosi Circle, Jehanabad was appointed as enquiry officer, the notice was given to the petitioner which he had replied addressed to the Superintendent of Police, Jehanabad. It appears from the record that prosecution witnesses were examined, the petitioner refused to cross-examine the witnesses, the enquiry officer submitted the enquiry report and, on that basis, the order of punishment was passed against the petitioner by the Superintendent of Police vide order dated 20.6.2008.

Being aggrieved by the action of the Superintendent of Police, the petitioner approached this Court in C.W.J.C. No. 18164 of 2009 (Annexure-13). This time also, the Court has interfered with the order on the ground that the petitioner was not supplied enquiry report with the second show-cause with a direction to supply enquiry report which has been submitted by the enquiry officer, accordingly, was again remanded back, whereafter, the petitioner was supplied with the second-show cause with the enquiry report and other documents and, thereafter, the petitioner filed his explanation but, the Superintendent of Police, instead of taking decision, again referred the matter to the Enquiry Officer for certain clarification, he further conducted enquiry, submitted the report without giving any opportunity of hearing to the petitioner.



Admittedly, this report was not supplied to the petitioner.

This dichotomy can be resolved in the manner that, as there was no order either for the fresh enquiry or further enquiry, the Enquiry Officer could not have proceeded for further enquiry and submit its own fresh report, as because in the present situation, there are two enquiry reports before this Court, one was earlier submitted, later on further enquiry was conducted and report submitted by the Enquiry Officer. So it has created a very anomalous situation. The fresh and further enquiry can be conducted only in a situation when the enquiry suffers from any illegality or any material has not been taken into consideration or there is violation of natural justice but, in the present case, the Disciplinary Authority had not directed for fresh enquiry or further enquiry but, the Enquiry Officer on his own has conducted the enquiry and submitted his fresh report which cannot be said to be a proper and valid exercise of power by the Enquiry Officer, the order of punishment is based upon both the enquiry reports.

In such view of the matter, this order passed by the Disciplinary Authority dismissing the petitioner from the service is not sustainable. As a confusion has arisen on account of two enquiry reports, it will be in the interest of justice there should be a fresh enquiry but, after giving fair opportunity of hearing to the



petitioner and the same should be completed within a period of six months from the date of receipt/production of a copy of this order, subject to cooperation extended by the petitioner.

The payment will be made subject to the result of the enquiry proceeding. So far the quantum of punishment is concerned, the Disciplinary Authority will be the appropriate authority to take a decision in accordance with law.

If the respondents would fail to conclude the enquiry within the aforementioned period of six months then, in that situation, the petitioner will be treated to have been put under suspension and will be entitled to 50% salary from the date of expiring six months. The entitlement of any benefit will be subject to the cooperation extended by the petitioner.

As this order has been passed on the basis of original record produced by the learned counsel for the State before this Court for its perusal, the same is being returned to him.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.06.2018
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