

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11937 of 2007

=====

Md. Israile son of Md. Rashid Khan, resident of Village Garura, P.O. Deo Makanday, P.s. Karakat, District-Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The D.G. cum I.G. of Police Bihar, Patna.
3. The D.I.G. of Police Rail, Bihar, Patna.
4. The S.P. Muzaffarpur Rail, Muzaffarpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. N.K. Malhotra, Sr. Adv.

Mr. Binod Kumar Sinha, Adv.

For the Respondent/s : Mr. Manish Kumar, AC to AAG-6

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 25-08-2018

The present writ petition has been filed for quashing the order dated 27.11.2004 passed by the Superintendent of Police (Rail), Muzaffarpur whereby and whereunder the petitioner has been dismissed from service. A further prayer has been made for quashing the appellate order dated 30.3.2006 and the memorial order dated 26.6.2007.

2. The brief facts of the case are that a departmental proceeding was initiated against the petitioner in the year 2004 and a charge sheet is said to have been served on the allegation of the petitioner having remained absent from duty in an unauthorized manner and thereafter having gone to the senior officer and misbehaved with him on account of non-payment of salary to him as



well as had assaulted the said senior officer. The enquiry officer had conducted the enquiry and submitted the enquiry report finding the petitioner guilty of the charges levelled against him. Thereafter, a second show cause notice dated 6.11.2004 was served on the petitioner seeking his reply as to why he should not be dismissed from service for the proved misconduct against him. Subsequently, the disciplinary authority, after receiving reply of the petitioner, had passed the order of dismissal dated 27.11.2004 and thereafter the appeal and the memorial of the petitioner were also rejected.

3. The learned senior counsel Shri N.K. Malhotra appearing for the petitioner has argued that firstly no presenting officer was appointed, hence the entire enquiry is vitiated. Secondly, it has been argued that the charges were not served on the petitioner and finally it is argued that second show cause notice issued to the petitioner is on a pre-determined notion regarding infliction of punishment of dismissal from service on the petitioner herein.

4. Per contra, the learned counsel for the respondents, by referring to annexure to the counter affidavit has shown that the information about the enquiry and the charge sheet was duly communicated to the petitioner and the petitioner had also signed in acknowledgement of receipt of the same, hence the issue raised by the learned senior counsel for the petitioner that the enquiry has been held



in an ex-parte manner is not correct. Secondly, it has been submitted that there is no lacuna in the procedure adopted for conducting the departmental proceeding, hence, this Court is not required to sit in appeal and re-appreciate the evidence, hence the order of dismissal from service is not required to be interfered with.

5. I have heard the learned senior counsel appearing for the petitioner and the learned counsel for the respondents as also perused the material on record. I find that the petitioner had due communication about conduct of the enquiry and the charges levelled against him, however, he failed to appear before the enquiry officer. In such view of the matter, the submissions advanced by the learned senior counsel do not merit any consideration since the petitioner had willfully not participated in the enquiry. Nonetheless, the enquiry officer has found the charges levelled against the petitioner to have been proved beyond doubt and thereafter the second show cause notice was served upon the petitioner and only then the order of dismissal has been passed, hence there is neither illegality in conduct of the disciplinary proceedings nor in passing of the impugned order of punishment.

6. Having regard to the facts and circumstances of the case, there is no merit in the present writ petition. Accordingly, the same is dismissed.



7. At this juncture, the learned senior counsel for the petitioner submits that the respondents be directed to pay the admissible amount of outstanding salary, due for the period prior to infliction of punishment of dismissal on the petitioner herein.

8. In view of the aforesaid submissions of the learned Senior counsel for the petitioner, the respondents are directed to pay all admissible amount of outstanding salary to the petitioner, if not already paid, forthwith.

(Mohit Kumar Shah, J)

BTiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.10.2018
Transmission Date	N/A

