

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2510 of 2013

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SUBODH KUMAR S/O SRI KAILASH SINGH R/O VILLAGE- BHERIA
KHURD, P.O.- BIJU BIGHA, DISTRICT- GAYA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE DIRECTOR GENERAL OF POLICE, BIHAR, NEW SECRETARIAT, PATNA
3. THE INSPECTOR GENERAL OF POLICE, BIHAR, NEW SECRETARIAT, PATNA
4. THE DEPUTY INSPECTOR GENERAL OF POLICE, GAYA, MAGADH RANGE, GAYA
5. THE POLICE SUPERINTENDENT, AURANGABAD (BIHAR)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Chaudhary, Adv, Mr. Shailesh Kumar Singh, Adv and Mr. Akshansh Ankit, Adv
For the Respondent/s	:	Mr. Amaresh Kumar Sinha AC to GA-1.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 27-06-2018

Heard learned counsel for the parties.

2. This application under Article 226 of the Constitution of India has been filed for quashing the order 07.01.2012 passed by the Superintendent of Police, Aurangabad, by which petitioner was dismissed from service and order dated 01.05.2012 passed by Deputy Inspector General of Police, the Appellate Authority dismissing the appeal of the petitioner and order dated 24.07.2012 passed by the Director General of Police, Bihar, Patna dismissing the Memorial filed by the petitioner.



3. Briefly stated, the facts of the case is that petitioner was posted on deputation at Madanpur Block, Aurangabad district and he was proceeded departmentally on the report submitted by the Police Inspector, Madanpur Circle, Aurangabad dated 23.04.2011, in which it was alleged that petitioner has withdrawn Rs. 1300/- as advance money by adding his name fraudulently in Command Order No. 446460 dated 20.04.2011 and Command No. 446761 dated 23.04.2011 and recommended disciplinary action against petitioner.

4. Petitioner was show caused by the Superintendent of Police, Aurangabad by memo dated 30.04.2011 to explain his conduct with respect to above allegations and in response to said show cause petitioner submitted his reply on 10.05.2011, which was not found to be satisfactory by the Superintendent of Police (Disciplinary Authority), as such decision was taken to initiate departmental proceeding against petitioner and memo of charge dated 04.06.2011 along with documentary evidence as well as list of witnesses on the basis of which charge was sought to be proved against petitioner was served upon him. Petitioner was found to have been indulged in indiscipline, lack of devotion towards duty and fraudulent act for illegal monetary gain.

5. The Disciplinary Authority appointed Inspector of



Police, Muffasil as Enquiry Officer and directed him to conclude the departmental proceeding and submit the enquiry report within a time frame. Tez Narayan Biswas was examined as prosecution witness and has proved the memo dated 347/11 dated 23.04.2011 with respect to report submitted by said memo regarding illegal entry made by petitioner in order letter (kaman patra) and obtaining advance of Rs. 1300/- and Rs. 1300/- on two panchayat election dates each which contained his signatures which has been marked as Exhibit by the Enquiry Officer in departmental proceeding. The second witness Havaladar Mir Hidayat Hussain did not appear before the Enquiry Officer to give evidence in support of charge framed against petitioner and in spite of three reminders sent to him, he failed to appear to give his evidence and Enquiry Officer concluded the proceeding and submitted enquiry report dated 31.10.2011 to the Disciplinary Authority but no finding has been recorded with respect to charge whether same stood proved or not proved.

6. A show cause dated 25.11.2011 with proposed punishment of dismissal from service was issued by the Superintendent of Police, Aurangabad (Disciplinary Authority) to the petitioner. However, from the records as produced by the



learned counsel for the State it does not appear that there is any finding by the Enquiry Officer in which charges against petitioner has been found to be proved or not proved. It appears that even said enquiry report was not sent to the petitioner along with second show cause notice and a notice dated 25.11.2011 was issued to the petitioner to submit his explanation in respect of punishment of dismissal from service to be imposed upon him.

7. Learned counsel for the petitioner has relied upon following judgments of the Apex Court:-

1. (1999) 8 SCC 582

2.(2003) 3 SCC 633

3.(2001(9) SCC 180

4.(2010) 2 SCC 772

5.(2008) 12 SCC 331

8. From the records of the case it does not appear that petitioner was informed of the dates by the Enquiry Officer for conduct of enquiry in which evidence were to be produced by the department. The oral evidence was recorded by the Enquiry Officer in absence of petitioner and he was not granted any opportunity to cross-examine him and proceedings were conducted ex parte without any information to the petitioner.



The enquiry proceedings were conducted contrary to the Rules and Procedure to hold departmental proceeding against a chargesheeted employee and even the principles of natural justice has not been complied while conducting the enquiry proceeding.

9. The enquiry proceeding as conducted by the Enquiry Officer stands vitiated for non compliance of mandatory provision and as such not sustainable and, accordingly, set aside. As a result the subsequent orders passed by the Disciplinary Authority, the Appellate Authority as well as Revisional Authority could not be maintained and are, accordingly, quashed.

10. Since, the allegation against the petitioner is serious in nature and enquiry report and subsequent orders have been quashed due to procedural infirmity, the matter is remitted to the Disciplinary Authority to initiate fresh enquiry proceeding from the stage it stood vitiated i.e. from the stage of serving of memo of charge. The Disciplinary Authority/Enquiry Officer has to conduct the enquiry proceeding with prior information to petitioner of the date of proceeding and all evidence to be produced before the Enquiry Officer by the department is to be adduced on the date fixed in presence of chargesheeted



employee with liberty to him to cross-examine the witnesses. However, if the chargesheeted employee even after valid service of notice does not appear, the Enquiry Officer can proceed *ex parte*. For the reasons as stated above, enquiry proceeding, enquiry report and orders passed by departmental Authorities are set aside. Petitioner is directed to be reinstated in service within three months from date of production/receipt of a copy of order passed by this court with 50 per cent back wages.

11. The writ petition stands disposed of with the aforementioned observation and direction.

12. The original records of the departmental proceeding produced by the learned counsel for the State be returned back to him.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

