

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7506 of 2013

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Dhanu Hambrum Son Of Late Soniya Hambrum Former Driver Constable
No. 358, B.M.P. - 6, Muzaffarpur Resident Of Village + Post - Tilka Reja, P.S.
- Manjha District - Sinhbhum (Chaibasa), Jharkhand

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna
3. The Deputy Inspector General Of Police, (B.M.P. Northern Division),
Muzaffarpur
4. The Commandant, B.M.P. -6, Muzaffarpur
5. The Conducting Officer, B.M.P. -6, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Kumar Jain
For the Respondent/s : Mr. U.S.S. Singh (G.P.-1)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 21-06-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 02.06.2008 passed by the Commandant B.M.P.-6, Muzaffarpur respondent No. 4 by which petitioner has been dismissed from service as well as order dated 01.12.2008 passed by D.I.G., B.M.P.-6, Muzaffarpur by which the appeal preferred by the petitioner has been dismissed.

3. Briefly stated, the facts of the case as stated by petitioner is that he was working on the post of Driver Constable in B.M.P.-6, Muzaffarpur.



4. Petitioner was driving Tata-709 vehicle of the B.M.P.-6 from Muzaffarpur to Patna on 06.11.2007 and met an accident in which several police personnels were injured and one Hawaldar Laxman Rai died during treatment.

5. A police case being Dudhni P.S. Case No. 408/2007 was registered. Petitioner was suspended on 07.11.2007 on the allegation of driving in drunken state and for reckless and negligence driving due to which accident took place.

6. Departmental proceeding was initiated against petitioner and memo of charge dated 12.12.2007 was served upon petitioner in which allegation made was driving the vehicle in drunken state in a reckless and negligent manner.

7. Charges were found to be proved against petitioner by the Inquiry Officer and he submitted its report to the Disciplinary authority. It has been stated that copy of deposition of witnesses were not given to him, as such he could not cross-examine the witnesses.

8. A 2nd show cause notice alongwith copy of enquiry report was served upon petitioner and he submitted his reply to the Disciplinary authority and after considering the enquiry report reply of the petitioner he was dismissed from service by order dated 02.06.2008 and appeal preferred by the petitioner was dismissed by the appellate authority on 10.06.2008.



9. It has been submitted on behalf of the petitioner that departmental proceeding as prescribed under police manual or CCA rules were not followed by the Inquiry Officer. Petitioner was not subjected to medical examination in order to determine if he was in drunken state. The department should have waited for the outcome of criminal case instituted against petitioner. It has been further submitted that petitioner was not granted adequate opportunity to defend this case and there had been violation of principles of natural justice and lastly it has been submitted that the punishment imposed is disproportionate to the proved charges.

10. The counsel for the petitioner has relied on the following judgments:-

1. (2006) 5SCC 446
2. 1971 (3) SCC 930
3. 2007(4) PLJR 571
4. 2007(4) PLJR (SC) 214
5. 2007(3) PLJR 55
6. 2007 (3) PLJR 842

11. A counter affidavit has been filed on behalf of the respondents in which it has been stated that petitioner was working as Driver (Police) in B.M.P.-6, Muzaffarpur and was driving Tata-709 on 06.11.2007 carrying police personnels on the vehicle. Petitioner was in a drunken state and was driving the vehicle in negligent and rash manner and met an accident in



which 19 police personnels were injured and a Hawaldar succumb to his injuries in Hospital. FIR was lodged against petitioner.

12. Petitioner was proceeded departmentally and was found guilty of charges by the Inquiry Officer and on the basis of enquiry report reply of the petitioner and materials available on record petitioner was imposed punishment of dismissal from service by the Disciplinary authority and appeal preferred by him was dismissed by the appellate authority.

13. It has been specifically stated in para-10 of counter affidavit that witnesses on behalf of department were examined in presence of petitioner and he himself refused to cross-examine the witnesses and has also made such endorsement during proceeding.

14. Defence witnesses were also examined before the Inquiry Officer at the instance of petitioner. Petitioner also filed his statement of defence which was duly considered by the Inquiry Officer.

15. The Doctor who examined the petitioner in Hospital found smell of liquor coming out and the vehicle was also examined by MVI and no defect was found in the brake.

16. During pendency of this writ petition the criminal



case has been decided and by order dated 01.09.2017 passed by Judicial Magistrate 1st Class, Muzaffarpur petitioner has been acquitted of the charges framed under Sections 279, 337, 338, 304A of I.P.C. on the ground of lack of evidence.

17. After hearing counsel for the petitioner and counsel for the State and going through materials available on record this Court does not find any procedure irregularities committed by the Inquiry Officer while holding the departmental enquiry. The memo of charge was properly served on petitioner and his reply against the memo of charge was considered and thereafter during enquiry proceeding witnesses were examined by the department in support of charge and in presence of petitioner and was granted opportunity to cross-examine them. Defence witnesses has also been examined on behalf of petitioner before the Inquiry Officer. The Inquiry Officer has considered the evidences adduced before him by both the parties and after duly considering the case of department as well as of defence has found the charges to be proved against petitioner. The Inquiry Officer has duly considered the defence of petitioner before giving his finding on the charges as framed against petitioner.

18. A 2nd show cause notice was served to petitioner alongwith enquiry report and he submitted his reply against the



finding of Inquiry Officer and the Disciplinary authority after considering the enquiry report, reply filed by petitioner and materials available during enquiry proceeding found the charges to be proved against petitioner and thereafter a notice was also issued with respect to proposed punishment and reply of the petitioner against proposed punishment was also considered by the Disciplinary authority and seeing the gravity of proved charge imposed punishment of dismissal from the service. The appellate authority has also considered the grounds of appeal filed by the petitioner while considering the appeal preferred by petitioner and after due consideration has dismissed the appeal of petitioner.

19. It is settled proposition of law that for similar charges a employee can be proceeded departmentally for which a criminal proceeding is also continuing against him. The Petitioner was dismissed from service in 2008 and he has filed this writ petition after lapse of more than 5 years and on this ground alone the writ petition was liable to be rejected. A delinquent can be punished in a departmental enquiry on basis of similar set of evidences whereas he can be acquitted by the criminal court as conviction in a criminal court has to be established beyond shadow of doubt whereas in a departmental



proceeding charges are to be established on the basis of preponderance of probabilities, as such even petitioner has been acquitted in criminal case in the year 2017, no benefit of such acquittal can be given to petitioner when he has been dismissed from the service in a departmental proceeding which concluded in the year 2008.

20. The Apex Court in State Bank of Bikaner and Jaipur Versus Nemi Chand Nalwaya since reported in 2011 (4) SCC 584 in para No. 10 has held as follows:-

“The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the



punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him”.

21. The scope of judicial review under writ jurisdiction against order passed by Disciplinary Authority is very limited. [This Court cannot examine the sufficiency, adequacy or reliability of evidences produced before the Enquiry Officer as same is the function of Enquiry Officer and departmental authorities. The scope of judicial review is limited to the decision making process and not the decision itself. The writ Court cannot appreciate the evidences led before the Inquiry Officer as an appellate court and if there is evidence on record to support the finding of Inquiry Officer and orders of departmental authorities, same cannot be interfered in writ jurisdiction.

22. Petitioner was a member of disciplined force and cannot be permitted to indulge in such acts which endangers the life and safety of other police personnel. Driving police vehicle in a State of intoxication is serious misconduct as such this Court does not find that punishment imposed is disproportionate to proven guilt.

23. For the reasons as stated above, this Court is not



inclined to interfere in the order passed by the departmental authorities against petitioner and accordingly writ petition is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	31.01.2018
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