

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4634 of 2005

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Ram Sharan Pd. Singh, son of late Laddu Singh, resident of village-Meharपुर, P.S.-
Shambhuganj, District-Banka

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna'
2. The Additional Director General of Police, Patna Range, Bihar, Patna
3. D.I.G. Magadh Range, Gaya, Bihar
4. Superintendent of Police, Aurangabad, Bihar
5. Conducting Officer of the Departmental Proceeding of 58/98 of S.P.
Aurangabad, Bihar

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Praveen Kumar
Mr. Jyoti Ranjan Jha

For the State : Smt. Binita Singh, SC-28

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 27-08-2018

The present writ petition has been filed for quashing the entire departmental proceedings on the ground of the same having been conducted in an ex parte manner. The petitioner has further prayed for directing the respondents not to act upon the order of dismissal as well as has sought for quashing the order dated 03.03.2004 passed by the D.G.P., Bihar, Patna by which the memorial appeal of the petitioner has been dismissed.

The brief facts of the case are that the petitioner was initially appointed as a Constable in the Bihar Police on 20.09.1979 and since then he was discharging his duties efficiently. The petitioner was put under suspension and a departmental proceeding



was initiated against the petitioner herein by an order dated 11.09.1998 and charge sheet was also served on the petitioner, inter alia, alleging therein that when the petitioner was posted on *Mela* duty on 02.09.1998, he did not go for discharging his duties and on 03.09.1998 at about 9:00 p.m. in the night the petitioner was found in an intoxicated condition and upon examination by the Medical Officer, the petitioner was found to have had liquor which is an instance of gross misconduct, negligence, irresponsible behaviour and suspected conduct. The Enquiry Officer had conducted ex parte enquiry and submitted ex parte report dated 23.03.1999 finding both the charges leveled against the petitioner to have been proved during the course of enquiry. Thereafter, a second show cause notice dated 16.12.1999 was issued to the petitioner herein seeking his reply, to which the petitioner had submitted his reply dated 30.12.1999 stating that conditional leave was granted to him, hence he was not required to go for *Mela* duties. As far as the allegation of the petitioner being drunk is concerned, the petitioner had clarified that he never indulges in taking any intoxicated product and in fact the doctor had not taken his blood or urine sample to examine the same and had on the pressure of the respondents given a report in their favour. The disciplinary authority i.e. the Superintendent of Police, Aurangabad by an order dated 27.05.2000 had passed the order of punishment,



whereby and where under the petitioner was dismissed from service. The petitioner had then filed an appeal but the same was dismissed by the D.I.G., Magadh Area, Gaya, by an order dated 09.07.2001. Lastly, the petitioner had preferred a memorial appeal before the Director General of Police, Bihar, Patna and the same has also been dismissed by an order dated 03.03.2004.

The learned counsel for the petitioner has submitted that the enquiry was conducted ex parte against the petitioner and he was not having any knowledge about initiation of the departmental proceeding or about the conduct of the enquiry against him by the Enquiry Officer, hence the entire proceeding is vitiated and on this ground alone the order of punishment as well as the entire departmental proceeding is fit to be quashed.

Per contra, the learned counsel appearing on behalf of the respondents, has produced the entire records pertaining to the departmental proceeding in question, conducted as against the petitioner herein, upon the same having been called for by this Court, and has submitted that the record would show that the petitioner himself had put his signature in acknowledgement of receipt of the charge sheet, hence the petitioner had voluntarily not participated in the enquiry for which no benefit can be granted to the petitioner herein.



I have heard the learned counsel for the parties and gone through the materials on record as also the records produced by the respondents pertaining to the departmental proceeding in question. From the records, though I find that the charge sheet was received by the petitioner but then it was incumbent upon the Enquiry Officer to ensure the presence of the petitioner or at least ensure service of the orders passed during the course of the departmental enquiry from day to day as well as the enquiry officer ought to have sent letters vide accepted mode of service to the petitioner intimating him about the conduct of the enquiry proceedings as also about the next date of hearing fixed from time to time in the on going departmental enquiry. However, on the contrary, this Court finds from the records that no such endeavour or effort was made by the Enquiry Officer and he had merely asked the Presenting Officer to intimate the charged officer. Thus the allegation of the petitioner that the enquiry was conducted ex parte, cannot be brushed aside. I further find that in case the petitioner was granted opportunity to defend himself he could have either cross-examined the prosecution witnesses or led his evidence but the said opportunity has been snatched away from the petitioner herein resulting in the entire departmental enquiry being vitiated on account of non-compliance of the principles of natural justice. Moreover, the order of punishment dated 27.08.2000, the appellate



order dated 09.07.2001 and the memorial appeal order dated 03.03.2004 also do not demonstrate consideration of the defence of the petitioner and the said orders have been passed merely relying on the opinion of the Enquiry Officer who has found the charges to have been proved ex parte. Last but not the least, the punishment of dismissal inflicted upon the petitioner is also disproportionate to the charges levelled against the petitioner especially on account of the fact that there is no whisper of any previous instances of misconduct or misdemeanor or irresponsible behaviour attributable to the petitioner herein.

Having regard to the facts and circumstances of the case as also for the reasons mentioned hereinabove in the preceding paragraphs, I find that the enquiry has been conducted ex parte, hence the enquiry report dated 23.03.1999 is quashed and consequently the order of punishment of dismissal passed against the petitioner herein dated 27.08.2000, the appellate order dated 09.07.2001 and the memorial appeal order 03.03.2004 are also set aside.

The learned counsel for the petitioner, at the time of final hearing of the present case held on 25.07.2018, had conceded that the petitioner would not insist for payment of back wages in case the present case is allowed, as has been recorded in the order of this Court dated 25.07.2018, passed in the present case. Consequently, I direct



that the petitioner, though would be entitled for other benefits, as a result of quashing of the order of punishment of dismissal dated 27.05.2000 and the appellate orders but without back wages. The respondents would be at liberty to conclude the disciplinary proceedings from the stage of the enquiry in accordance with law.

The writ petition is allowed with the aforesaid observations.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	N.A.
CAV DATE	25.07.2018
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