

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17017 of 2014

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Kedar Prasad Singh, son of late Mahendra Prasad Singh, resident of village-
Godhiyari, P.S. Bishanpur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Darbhanga.
4. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
5. The Senior Superintendent of pPolice, Madhubani.
6. The Sub-Divisional Police Officer, Jhanjharpur, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
For the Respondent/s	:	Mr. Umesh Narayan Dubey, A.C. to G.P.-27

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 25-04-2018

This writ petition under Article 226 of the Constitution of India has been filed for issuance of writ of certiorari for quashing the order dated 16.12.2011 passed by the Superintendent of Police, Madhubani by which petitioner has been dismissed from service as well as order dated 15.12.2011 passed by Deputy Inspector General of Police, Darbhanga by which appeal has been dismissed as well as order dated 09.08.2012 passed by Inspector General of Police by which revision petition has been dismissed. Petitioner has also prayed for quashing the memo of charge dated 16.07.2009.

2. Briefly stated, the case of the petitioner is that he was appointed as Constable on 01.07.1972 in Darbhanga



District Police. He was promoted on the post of Assistant Sub-Inspector of Police on 22.10.1984 by the Director General of Police and further promoted on the post of Sub-Inspector of Police on 07.01.2006.

3. Petitioner was posted as Sub-Inspector of Police in Rudrapur Police Station where the Vigilance P.S. Case No. 73 of 2009 was lodged against him on 26.09.2009 for demanding and accepting Rs. 3,500/- as bribe. It has been alleged that one Abdul Hai made a complaint to the Officer-in-Charge of the Vigilance Police Station that his ancestor had purchased some land in the year 1979 and in the year 1981 by registered sale deed. On 09.06.2009 while the complainant was constructing his house petitioner went to the site along with relatives of complainant and stopped construction and asked them to come along with documents and when brother and uncle of complainant went to police station, he took Rs. 6000/- and demanded Rs. 5000/- more and only then he would allow them to construct their house and he was apprehended accepting bribe by Vigilance Team.

4. Petitioner was arrested by the Vigilance Team and he was put under suspension by the orders of Superintendent



of Police, Madhubani and while petitioner was in custody a memo of charge dated 16.07.2009 was framed against the petitioner. Petitioner was released from jail in 2009 and was directed to appear before the Sub-Divisional Police Officer, Jhanjharpur, Madhubani who was appointed as Enquiry Officer. In the memo of charge dated 16.07.2009 it was alleged that Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna vide memo dated 30.06.2009 has informed that petitioner was arrested by Vigilance Team on 25.06.2009 while accepting bribe of Rs. 3,500/- from complainant Abdul Hai for which Vigilance P.S. Case No. 73 of 2009 was instituted against the petitioner under Prevention of Corruption Act.

5. It has been submitted on behalf of petitioner that memo of charge is not in conformity with Rule 17(3) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. There is no imputation of misconduct or list of documentary and oral evidences in memo of charge on the basis of which department proposes to prove the charges and as such, the proceeding was faulty from its conception.

6. Petitioner appeared before the Sub-Divisional Police officer, Jhanjharpur, Madhubani on 05.02.2010 and



requested to supply necessary documents to prepare his defence but he received a message dated 06.08.2010 to submit his last defence statement by 13.08.2010.

7. Petitioner prayed to the Enquiry Officer that departmental proceeding be stayed till the supply of documents demanded by the petitioner, as same was not provided to him. However, the Enquiry Officer proceeded with the enquiry and statement of witnesses were recorded by the Enquiry Officer on 05.10.2010 and 22.02.2010 without any intimation to the petitioner. Petitioner was not granted any opportunity to cross-examine them. On the one hand petitioner was being asked by the Enquiry Officer to submit his last defence statement, on the other hand he was recording the statement of witnesses without any intimation to petitioner, however, petitioner submitted his last defence statement on 07.10.2010 raising the issue of incomplete memo of charge and had also prayed to stay the departmental proceeding during the pendency of criminal proceeding. The Enquiry Officer submitted his report dated 11.10.2010 to the Disciplinary Authority and did not give any finding with respect to charges framed against the petitioner on the ground that



similar charges is pending before the Vigilance Court as such, it is not proper for him to give any finding on the charges as framed against petitioner.

8. No action was taken on the enquiry report and it has been submitted by the counsel for the petitioner that the then Superintendent of Police, Madhubani agreed with the opinion of Enquiry Officer that departmental proceeding shall be kept under abeyance till the conclusion of criminal proceeding but after his transfer when the present S.P., Madhubani was posted there he sent the file to the D.I.G. and thereafter petitioner was asked to submit his explanation against the punishment of dismissal within a period of 15 days vide memo dated 08.11.2011 issued by D.I.G. of Police, Darbhanga Range, Darbhanga.

9. It has been submitted that D.I.G. wrongly recorded in his letter that Enquiry Officer has proved the charges rather Enquiry Officer had not proved the charges and has given opinion that since criminal case is pending, he is not supposed to give opinion over the similar charges, which are pending before the Court of law.

10. Petitioner submitted his explanation on 22.11.2011



stating therein that Enquiry Officer has not found the charges to be proved, as such, he cannot be awarded any punishment of dismissal but ignoring the explanation of petitioner the D.I.G., Darbhanga vide memo dated 09.12.2011 directed the petitioner to submit his last defence within a period of three days and petitioner submitted detailed explanation on 12.12.2011. Petitioner had filed a writ petition in C.W.J.C. No. 23134 of 2011 for staying the departmental proceeding as well as against memo dated 08.11.2011 and 09.12.2011 but same was dismissed on 02.01.2012 with liberty to challenge the final order passed in Department proceeding.

11. The D.I.G. vide memo dated 15.12.2011 passed the order of dismissal against the petitioner and Superintendent of Police, Madhubani vide memo dated 16.12.2011 issued the dismissal order. Petitioner preferred an appeal before the Inspector General of Police, Darbhanga on 24.01.2012 but same was rejected vide memo dated 09.08.2012. Petitioner thereafter sent his memorial to the Director General of Police but no order was passed on this memorial.

12. Petitioner retired on 30.11.2013.

13. Petitioner has challenged the very initiation of



departmental proceeding as memo of charge served upon petitioner was not in conformity with Rule 17(3) of CCA Rules, 2005. Petitioner was not provided any document as demanded by him in order to file a effective reply against the memo of charge. No Presenting Officer was appointed in the Departmental proceeding and Enquiry Officer played the role of Presenting Officer while the Enquiry Officer did not examine the complainant nor examined any of the members of trap team of Vigilance to prove the charges rather he examined only formal witnesses and petitioner was not provided any opportunity to cross-examine them.

14. It has been further submitted that Enquiry Officer did not hold the charges as proved and he observed that the departmental proceeding should be kept under abeyance till conclusion of criminal trial, as such, there was no occasion for the Disciplinary Authority to pass an order of dismissal based upon such enquiry report. Petitioner was not given any 2nd show cause notice by the Disciplinary Authority with any tentative reasons from differing with the findings of Enquiry Officer, as such, the order passed by him is not sustainable.

15. It has been lastly submitted that petitioner was



holding the post of Sub-Inspector of Police and D.I.G. was not his appointing authority as such no order of dismissal ought to have been passed by the D.I.G.

16. A counter affidavit has been filed on behalf of respondents in which it has been stated that memorandum of charges served upon petitioner contained the description of allegation and all the relevant documents were supplied to petitioner along with memo of charges. Petitioner did not cooperate in the departmental proceeding and was trying to delay the departmental proceeding. Petitioner had full knowledge about every stage of the proceeding and examination of witnesses and he knowingly avoided appearance and did not cross-examine the witnesses.

17. It is a settled proposition of law that departmental proceeding as well as criminal proceeding based on similar charges and identical set of evidences can continue simultaneously and Disciplinary Authority is under no obligation to stay the departmental proceeding, during the pendency of criminal proceeding unless and until there is an order by court of law or departmental rules provide as such. The standard of proof in departmental proceeding and criminal



proceedings are different and it may be possible that on identical charges and identical evidences accused can be exonerated by the criminal court as charges are to be proved beyond reasonable doubt whereas on similar charges and similar set of evidences a delinquent can be held guilty in departmental proceeding as charges in the departmental proceeding is to be established on preponderance of probabilities, as such there was no occasion for the Disciplinary Authority to stay the proceeding during criminal trial and no illegality has been committed by him by refusing to stay departmental proceeding.

18. This Court has gone through the enquiry report as contained in Annexure-8 dated 11.10.2010 and has found that Enquiry Officer has not held the charges to be proved against the petitioner for the reasons that similar charges are pending before the Vigilance Court and it was not proper for him to give finding on such charges. The D.I.G., Darbhanga by his show cause dated 08.11.2011 has held that Enquiry Officer has found the charges to be proved against the petitioner and looking to the seriousness of allegation why he should not be dismissed from service for which explanation was sought from the



petitioner within 15 days. The Disciplinary Authority is the final authority who is also the appointing authority, and it is he, who has to impose punishment on the delinquent. Before imposing punishment, he has to send a copy of enquiry report to the delinquent and if in the enquiry report charges has been found to be proved, he has to consider the reply of delinquent against the finding of Enquiry Officer and only then he has to form an opinion with respect to charges framed against delinquent.

19. In present case the Disciplinary Authority has formed an opinion on the basis of enquiry report that charges are proved against the petitioner and petitioner should be dismissed from the service, even prior to receiving reply by the petitioner. In the enquiry report, this Court does not find any finding of the enquiry officer that charges against the petitioner stands proved. The Disciplinary Authority has not issued any show cause to petitioner giving his tentative reasons for differing with the findings of Enquiry Officer and had issued notice against the proposed punishment of dismissal which is incomplete violation Bihar Government Servant CCA Rules, 2005 and also has been found to be contrary to Principles of natural justice by the Apex Court, and as such not sustainable



either in law or in fact and is accordingly quashed. Subsequent appellate order and order on memorial also cannot be sustained and is accordingly quashed, as the petitioner had retired from the service there cannot be any order of reinstatement. However, respondents are directed to grant him 90% provisional pension and 90% provisional gratuity and all other retirement benefits due to him within three months from the date of receipt/production of a copy of order passed by this Court. The Vigilance Case is still pending against the petitioner as such he is not entitled for final pension and final gratuity and respondent authorities are at liberty to pass an appropriate order under the Bihar Pension Rules, if petitioner is found guilty by the Vigilance Court, till then he is entitled for provisional pension and provisional gratuity. The salary during the suspension period will be dependent upon the outcome of judgment and order of Vigilance Court.

20. The writ petitioner is allowed to the extent as indicated above. However, this order will not come in the way of Disciplinary Authority, if he thinks proper to initiate fresh proceeding against the petitioner in accordance with law and in conformity with procedure as laid down in Bihar Government



(CCA Rules) 2005/Bihar Pension Rules.

21. The writ petition is allowed, however, without any costs.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	16.02.2018
Uploading Date	03.05.2018
Transmission Date	N.A.

