

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.470 of 2018

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Dharmendra Kumar, son of Late Ram Pravesh Singh, Resident of Village- Masad,
Police Station- Udwant Nagar, District- Bhojpur, Pin- 802162 (Dismissed Sub-
Inspector of Police, Bihar Police).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police)
Department, Government of Bihar, Patna.
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Zonal Inspector General of Police, Patna Zone, Patna.
4. The Deputy Inspector General of Police Sahabad Range at Dehri-on-Sone,
Rohtas.
5. The Superintendent of Police, Buxar.
6. The Sub-Divisional Police Officer, Buxar.
7. The Inspector cum Officer-in-Charge, Buxar Town Police Station, Buxar.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Uday Kumar

For the Respondent/s : Mr. SHEO SHANKAR PRASAD, SC-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V JUDGMENT

Date: 27-06-2018

The present writ petition has been filed for quashing of the order dated 05.08.2016 passed by the Deputy Inspector General of Police, Sahabad, Dehri-on-Sone, whereby and whereunder the petitioner has been dismissed from service. The petitioner has further prayed for setting aside the appellate order dated 27.01.2017, the order passed by the Director General of Police, Bihar dated 04.12.2017, whereby the memorial filed by the petitioner against the appellate order has been dismissed and for quashing the enquiry report dated 17.06.2016.

2. The brief facts of the case are that the petitioner entered the services of the Government of Bihar as a Sub-Inspector of Police in the year 2012 and after training / probation period he was



posted in Buxar Town Police Station in the District of Buxar. The petitioner had served to the satisfaction of all concerned and while he was posted as Sub-Inspector in the Buxar Town Police Station on 24.5.2016, he went to pacify the agitating students outside the Police Station along with the Officer-in-Charge-cum-Inspector of Police but subsequently the said Officer-in-Charge-cum-Inspector of Police sent a fabricated report to the Superintendent of Police, Buxar on 02.06.2016 stating therein that he had come to know that on 24.05.2016 the petitioner along with some constables had conducted a raid on the house of one Bablu Chaudhary where gambling was going on and had apprehended two persons including one Rajendra Verma but he was released by the petitioner after receiving illegal gratification of Rs. One lakh fifty thousand (Rs.1,50,000/-). Thereafter, the petitioner was immediately suspended vide order dated 03.06.2017 by the Superintendent of Police, Buxar and in the meantime, the petitioner as well as other constables were coerced into giving confessional statement. The S.D.P.O. had then submitted a report dated 04.06.2016 whereafter a departmental proceeding was directed to be initiated against the petitioner and on the same day a memo of charge dated 04.06.2016 was issued and the Enquiry Officer was appointed by the Superintendent of Police.

3. Thereafter, the Enquiry Officer had sent a notice to the petitioner dated 06.06.2016 to appear on 08.06.2016 and submit his defence. The petitioner had then appeared before the Enquiry Officer and filed a written statement of defence along with an



affidavit of the purported victim namely Rajendra Verma denying the allegation levelled against him. The petitioner had also raised objection regarding the initiation and continuance of the departmental proceeding by an incompetent authority. The petitioner is said to have filed an application on 17.06.2017 before the Conducting Officer to fix a date for examination of defence witnesses but the Conducting Officer did not permit the petitioner to adduce defence witnesses and hurriedly the enquiry report was filed by the Enquiry Officer on 17.06.2017 finding the petitioner guilty of the charges leveled against him.

4. After the submission of the enquiry report, the Superintendent of Police, Buxar by his memo dated 06.07.2016 had recommended for dismissal of the petitioner from his service, whereafter the Deputy Inspector General of Police, Sahabad Area, Dehri-on-Sone by memo dated 26.07.2016 had issued a show cause notice to the petitioner directing him to file his reply to the said notice on the point of proposed punishment of dismissal. The petitioner had then filed his reply whereupon the impugned order of punishment of dismissal of the petitioner from his services was issued by the Deputy Inspector General of Police, Sahabad Area, Dehri-on-Sone vide Memo dated 05.08.2016. The petitioner had then filed an appeal which was dismissed by an order dated 27.1.2017 and thereafter his memorial was also dismissed by an order dated 04.12.2017.

5. The learned senior counsel for the petitioner has firstly



submitted that the very initiation of the departmental proceeding by the Superintendent of Police, Buxar vide Memo dated 04.06.2016 is bad inasmuch as the disciplinary authority of the petitioner herein (Sub-Inspector of Police) is admittedly the Deputy Inspector General of Police as per Clause 825(c) of the Bihar Police Manual whereas the memo of charge has been issued to the petitioner by the Superintendent of Police, Buxar. The next issue raised by the learned senior counsel is regarding non-appointment of the Presenting Officer, which has resulted in vitiating the entire enquiry inasmuch as the Enquiry Officer himself has taken upon himself the role of the Presenting Officer which clearly shows that he has failed to discharge his duties as a fair and impartial enquiry authority. The learned senior counsel has further argued that it is not a disputed fact that victim Rajendra Verma has not been examined during the course of enquiry, who was the best witness to prove or disprove the charges levelled against the petitioner, hence the present case is a case of no evidence. It is further submitted that the impugned order of punishment of dismissal dated 05.08.2016 is solely based on the report of the Superintendent of Police, Buxar and the impugned order dated 05.08.2016 further shows non-application of mind on the part of the disciplinary authority while passing the said order inflicting punishment of dismissal on the petitioner. The learned senior counsel has also argued that none of the documentary evidence has been proved during the course of the departmental enquiry and in fact the petitioner was prevented from adducing his defence witnesses thus



vitiating entire departmental enquiry.

6. Per contra, the learned counsel for the respondents has submitted that proper procedure required to be followed right from the initiation of the departmental proceeding up to the passing of the punishment order, has been adhered to, hence this Court cannot sit in appeal and re-appreciate the evidence led during the course of enquiry, thus it is submitted that no interference is warranted in the impugned order of punishment of dismissal, inflicted upon the petitioner.

7. I have heard the learned counsel for the parties and perused the materials on record. Rule 17 & 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules 2005'), lays down a mandatory procedure to be followed by the disciplinary authority which begins from the stage of service of charge memo by the disciplinary authority enabling the delinquent to respond thereto, giving an equal obligation on the disciplinary authority to satisfy himself whether the allegations are required to be pursued and only after the disciplinary authority is satisfied as also upon completion of such exercise as mandated under Rule 17(3) read with Rule 17(4), the disciplinary authority can either interfere into the matter himself or delegate an Enquiry Officer under Rule 17(6) to enquire into the same and only thereafter the Enquiry Officer takes over the proceeding. Under Rule 17(6) of the Rules, 2005, the disciplinary authority has another obligation i.e. to appoint a Presenting Officer



for leading the case of the Department, which in the present case has been given a go-bye. It is apparent from the records that the proceeding under challenge has been held de hors the procedure inasmuch as neither the petitioner has been heard on the charge by the disciplinary authority which is apparent from the copy of the charge memo framed by the Superintendent of Police dated 04.06.2016 (Annexure-P-5 to the writ petition). Moreover, the absence of the Presenting Officer as mandated under Rule 17(6) perpetuates the illegality, which is a serious lacuna and has rendered the entire proceeding illegal. The said legal position is no longer *res integra* inasmuch as the same has been settled by this Court in a judgment dated 29.06.2017 passed in CWJC No. 7207 of 2016 (Shankar Dayal vs. State of Bihar & ors.), relevant portion whereof is reproduced hereinbelow:-

“Rule 17(3) of „the Rules” casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated. In the present case this



mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure 2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996(2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

8. From the counter affidavit filed by the respondents, it is apparent that there is no denial of the fact that no Presenting Officer was appointed in the present case. In fact, instead of the disciplinary authority seeking reply on the charges from the petitioner, the Enquiry Officer by his letter dated 04.06.2016 had sought reply on the charges from the petitioner, which is illegal and contrary to the Rules, 2005, hence the enquiry from its very inception stood vitiated.

9. At this juncture, it would be relevant to reproduce paragraph no. 28 of the judgment rendered by the Hon'ble Apex Court, reported in (2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha) hereinbelow:-



“28. An inquiry officer acting in a quasi- judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

10. Admittedly in the instant case, the Enquiry Officer has donned upon himself the role of the Presenting Officer resulting in the entire enquiry having stood vitiated. In this regard, it would be relevant to reproduce paragraph no. 11 of a judgment reported in ***1996(1) PLJR 401 (Panchanan Kumar vs. the Bihar State Electricity Board)*** hereinbelow:-

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take



upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice. ”

11. In the circumstances, so discussed herein above it is apparent that no Presenting Officer was appointed either to lead or prove evidence collected against the petitioner and the Enquiry Officer could not have assumed this duty to examine the evidence and to hold the same sufficient to uphold the guilty of the petitioner in absence of the Presenting Officer. This mandatory procedure of examining the evidence to see whether it is supportive of the allegation made and connect the delinquent with the charges, could not have been discharged by the Enquiry Officer himself. The Enquiry Officer, in such circumstances, could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges, hence on this ground alone, the enquiry report is fit to be set aside. Another issue is regarding the very initiation of the departmental proceeding being illegal inasmuch as the memo of charge has in fact not been issued by the disciplinary authority, who admittedly is the Deputy Inspector General, Sahabad Area, Dehri-on-Sone but the same has been issued by a subordinate official who was / is not competent to issue the memo of charges, hence on this ground alone, the entire disciplinary proceeding is fit to



be set aside. Another illegality committed by the disciplinary authority while passing the impugned order of punishment of dismissal dated 05.08.2016 is that the same is based on the opinion and recommendation of the Superintendent of Police, Buxar and the said impugned order dated 05.08.2016 smacks of total non-application of independent mind by the disciplinary authority while passing the order of punishment, hence on this sole ground, the order of punishment dated 05.08.2016 is fit to be set aside.

12. It would be unfair to the petitioner, if the issue regarding the present disciplinary proceeding being a case of no evidence is not discussed. In this regard, it is stated that the most vital witness in the present case i.e. victim of the present case has not been examined by the prosecution, as admitted in the counter affidavit, hence the present case can be said to be a case of no evidence, especially on account of the fact that the documentary evidence which has been sought to be relied upon by the prosecution, has not been proved individually during the course of the enquiry. Moreover, neither the petitioner has been granted opportunity to cross-examine the witnesses nor he has been granted an opportunity to lead the defence witnesses. On this ground as well the entire disciplinary proceeding is vitiated and fit to be set aside. Reference in this regard be had to a judgment of the Hon'ble Apex Court, reported in **(2009)2 SCC 570 (Roop Singh Negi vs. Punjab National Bank)**. From the facts and circumstances stated herein above, as also from the discussions made in the present judgment regarding the position in law, this Court



finds that the disciplinary proceeding in question is classic example of statutory violations.

13. For the reasons and discussions aforementioned and in view of the legal position discussed, the entire disciplinary proceeding resulting in the order(s), impugned is held illegal and *de hors* the statutory procedure. Accordingly, the enquiry report dated 17.06.2016 (Annexure-11 to the writ petition), the order of punishment dated 05.08.2016 (Annexure-16 to the writ petition), the appellate order dated 27.01.2017 (Anenxure-19 to the writ petition) and the order dated 04.12.2017 passed by the Director General of Police, Bihar (Annexure-21 to the writ petition), are accordingly, quashed and set aside. As a consequence, the petitioner is directed to be reinstated on his post with all consequential benefits, which should be provided to him within a period of three months from the date of receipt / production of a copy of this order.

14. The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

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CAV DATE	27.03.2018
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