

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 11618 of 2014

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Lal Babu Ram, s/o late Hira Ram, resident of vill. Ambedkarnagar, P.O., P.S.
and District Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar through Director General of Police, Bihar, Patna
2. Deputy Inspector General of Police, Darbhanga
3. Inspector General , Manavadhikar, Bihar, Patna.
4. Superintendent of Police, Samastipur.
5. Superintendent of Police, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Amarendra Narayan, Advocate
For the Respondent/s : Mr Niraj Kumar, AC to GA X

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 21-06-2019

Heard learned counsel for the petitioner as well as the
learned counsel for the respondent-State.

2 At the very outset, learned State Counsel has taken a
preliminary objection regarding maintainability of the writ petition
on the ground that two distinct proceedings, conducted against the
petitioner, have been made the subject matter of the same writ
petition.

3 Being faced with such difficulty, Mr Amredra
Narayan appearing for the petitioner has submitted that he would
confine himself in the instant proceedings to the departmental



punishment contained in Memo No 6770 dated 12.10.2006. Such submission, however, is made reserving the right of the petitioner to assail the punishment contained in Memo No 2389 dated 26.03.2008 in a separate proceeding.

4 Having regard to such submission, this Court would, in the instant proceedings, consider the validity of only punishment order contained in Memo No 6770 dated 12.10.2006.

5 The petitioner has been proceeded against for some alleged lapse committed by him while posted in Samastipur Town Police Station. Allegation is that on 19.07.2004, an Unnatural Death Case was lodged. Lodging of the case gave rise to a requirement for having an inquest conducted on the corpse. Allegation is that at 11.30 when the petitioner was called upon to take the body for inquest, he refused to do so and left the Police Station. It is, thereafter, alleged that when some persons from the Police Station went to call the petitioner from his home then he fled away from his home to the market area.

6 On the aforesaid charges communicated to the petitioner on 30.07.2004, the petitioner was subjected to an enquiry by the Superintendent of Police. The officer, who recorded the evidence and defence, found the charges not proved against the petitioner. Enquiry officer has considered the defence



of the petitioner that he was on duty since 10 pm on 18.07.2004 till 8 am on 19.07.2004. Having completed his duty, he had gone home and, thereafter, to the market for some personal reasons. It is his submission that while he was in the market, if some one had gone to call him at his residence, as alleged, the petitioner could not have known about the same. Taking note of the aforesaid facts, the Enquiry Officer has found the charges not proved.

7 The Superintendent of Police, however, differing with the findings submitted by the Enquiry Officer, has proceeded to award the petitioner the punishment of withholding of one increment for six months equivalent to one black mark under his order dated 12.10.2006.

8 Aggrieved by the said order, the petitioner has gone in appeal. Appeal of the petitioner has been rejected by order of the Deputy Inspector General of Police, Darbhanga Range on 10.11.2008.

9 The proceedings have been conducted under Rule 828 (c) of the Bihar Police Manual. Placing reliance on the said Rule, Mr Narayan appearing for the petitioner submits that the punishment, inflicted by the Superintendent of Police, was required to state clearly first the charge against the defaulter, his



answer to each charge one by one, and lastly the finding upon each charge of the officer inflicting the punishment.

10 Learned counsel for the State submits that the procedure under Rule 828 (c) of the Bihar Police Manual has been followed. The Superintendent of Police has assigned reasons in support of the decision and, as such, non-recording of the defence, which was earlier recorded in the enquiry, does not prejudice the petitioner's case.

11 Submission of the learned State Counsel are noted only to be rejected. Clear requirement under Rule 828 (c) of the Bihar Police Manual was that apart from the charges and findings, defence of the delinquent was also to be recorded by the Superintendent of Police. The same is only to ensure fairness and that decision of the Superintendent of Police after due consideration of the petitioner's defence. Order passed without even taking note of the defence, renders the whole procedure futile. If the defence was not to be looked into and such a situation is allowed to continue, then the Authority would be free to pass any order whatsoever. Such a situation cannot be countenanced as the same would lead to a situation where the defence of the delinquent is not considered at all.



12 The Authority, exercising power under Rule 828 (c) of the Bihar Police Manual, must discharge his duty of recording the charges, defence of the delinquent and findings on each charge as that is the procedure prescribed under the Rule under which he is exercising jurisdiction. It is trite law that where the procedure is prescribed then the Authority would be required to conduct himself in accordance with the procedure and in no other way. In this connection, this Court would refer to decision in the unreported case of *Abhimanyu Singh -Versus- State of Bihar & Ors* rendered in *CWJC No 5921 of 2014*. Relevant extract of the same is being quoted:

10 An additional submission has been made by the learned counsel for the petitioner that where the Statute or Rule provides a procedure of exercise of power, all other modes are prohibited. Learned counsel for the petitioner has relied upon decisions in the case of Dipak Babaria and Another -Versus- State of Gujarat and Others, reported in (2014) 3 Supreme Court Cases 502 and Promod Kumar Drolia -Versus- Bihar State Electricity Board & Others, reported in 2014 (2) PLJR 270. Such submission advanced on behalf of the petitioner also requires consideration in view of the fact that no unguided or uncanalized power is vested in any Authority. The Rules of conduct of enquiry, which have been prescribed under the Bihar CCA Rules, are there to ensure fairness in the conduct of proceedings and to ensure that no one, who is innocent, should be punished. The Authority would be well advised to discharge such quasi judicial adjudicatory function in accordance with the Rules and such exercise of jurisdiction de hors the Rules, as has been done in the instant case by issuing the



Resolution dated 25.02.2014, is contrary to established legal principles of fairness and natural justice.”

13 This Court would observe that requirement in Rule 828 (c) of the Bihar Police Manual is only to ensure that the decision of the Authority is manifest with the details/reasons. It is only if the Rule is complied and the charge, answer of the delinquent and findings are recorded that the decision can be sustained. In absence of any consideration of petitioner's defence, which formed the basis of the report submitted by the Enquiry Officer favourable to the petitioner, the decision of the Superintendent of Police suffers with the vice of non-consideration of the petitioner's defence in violation of the procedure prescribed under Rule 828 (c) of the Bihar Police Manual under which the action has been taken and, as such, grossly unjust and violative of the principles of natural justice.

14 The order of the Superintendent of Police dated 12.10.2006 is, therefore, grossly unsustainable and is violative of principles of natural justice as also in violation of Rule 828 (c) of the Bihar Police Manual. The order is hereby quashed.

15 Appellate order dated 13.02.2009 of the Deputy Inspector General of Police, Darbhanga Range affirming the said



illegal order, therefore, must also collapse. The same is also set aside.

16 Writ petition is allowed to the extent indicated herein above, however with liberty to the petitioner to assail the order of punishment dated 26.03.2008 in a separate proceeding.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.06.2019
Transmission Date	NA

