

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8075 of 2015

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Punya Raj Gurung S/o Padam Bahadur Gurung Resident of Village Jhanda Chowk, Doranda, Police Station Doranda, District Ranchi, Jharkhand, presently residing at Quarter No. A-2, Khagaul Road, Gardanibagh, Police Station Gardanibagh, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, Government of Bihar, Patna.
3. The D.I.G., Military Police, Kendriya Mandal, Patna.
4. The Commandant, B.M.P.-1, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ebrahim Kabir
		Mr. Shruti Sinha
For the Respondent/s	:	Mr.Mirtunjay Kumar, AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-07-2019

Heard counsel for the petitioner and counsel for the respondents.

Petitioner was a constable in Bihar Military Police and was proceeded against on the basis of charge memo dated 03.05.2014. Petitioner pursuant to the enquiry has been dismissed on 22.09.2014. Writ petition has been filed assailing the orders of dismissal as well as rejection of the appeal filed by the petitioner before respondent no.2.

Counsel for the petitioner submits that the proceeding was conducted against him on the basis of a charge. The fact that



he was a probationer does not allow the authorities to dismiss him in the manner in which it has been done.

Once the respondent-authorities had taken a decision to proceed against the petitioner on the basis of charges, they would be bound by procedural requirement and to observe the principles of natural justice.

Counsel for the respondents submits that conduct of the petitioner was such that it was necessary to proceed against him as he did not maintain discipline which is mandatory in police service.

On consideration of rival contentions, this court would observe that once the authorities have chosen to proceed against the petitioner on the basis of charges and proceeded against him in a duly constituted departmental proceedings for proving such charge, they would be bound by the requirement of procedural fairness prescribed under the disciplinary rules and principles of natural justice.

Admitted position having regard to the statements made in the counter affidavit it that enquiry report submitted by Enquiry Officer was not served on the petitioner. Without serving copy of enquiry report, petitioner has been dismissed from service on the basis of charges.



Counsel for the respondents has submitted that the petitioner had also preferred memorial. However, neither petitioner nor the respondents are aware of the fate of memorial.

Short issue which remains is whether due to non-service of copy of enquiry report proceedings would be vitiated or not. Issue has been settled by catena of decisions right from decision in the case of Managing Director, ECIL vs B. Karunakar reported in (1993) 4 SCC 727.

Copy of enquiry report was required to be served on the petitioner. Failure in the instant case has caused great prejudice to the petitioner. He has alleged that vital document has not been supplied to him which has been relied upon by the Enquiry Officer.

In the circumstances, this court would set aside the order of dismissal dated 22.09.2014 passed by the Commandant, BMP 1, Patna whereby petitioner has been dismissed from service. The order of the appellate authority dated 06.01.2015 issued by respondent no.2 has merely affirmed the said illegal order and the same must collapse and the same is also set aside.

Matter is, therefore, remitted to disciplinary authority, namely, Commandant to serve copy of enquiry report on the petitioner treating the petitioner as being under suspension.



Proceeding should be conducted from that stage in accordance with law.

Entitlement of the petitioner, as a consequence of setting aside of the orders, will abide by final decision to be taken by the disciplinary authority in the proceeding upon remand by this court.

Respondents would also have the option of proceeding against the petitioner as per law as his status is only of a probationer.

Writ petition stands allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.8.2019
Transmission Date	NA

