

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12094 of 2005

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Satendra Rai, son of Late Keshwar Rai, r/o Village Gujar, PO & PS
Kachawa, District Rohtas

... .. Petitioner

Versus

1. The State of Bihar through Secretary Department of Home (Police) Govt. of Bihar New Secretariat Patna
2. Director General -cum Inspector General of Police, Bihar Patna
3. Deputy Inspector General, Railway Police, Patna
4. Deputy Inspector General of Police (H.Q.) Bihar Patna
5. Superintendent of Police, Railway Police, District Muzaffarpur
6. Piter Bala Enquiry Officer cum Prachare Prawar, Railway District Muzaffarpur
7. Sheo Pujan Ram, Officer-Incharge Railway Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava
		Mr. Gajendra Kumar Singh
For the Respondent/s	:	Mr. Kinkar Kumar, SC 9

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 30-08-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the respondents.

The writ petition has been filed assailing Muzaffarpur
Rail District Order No. 621 of 2004 contained in Memo dated
1.4.2004, dismissing the petitioner from service.

The petitioner was posted as a Constable in the Railway
Police. He was member of an escort party constituted for
escorting Train No. 276 down. It is alleged that on 8.6.2003 some smugglers
were carrying 20 Kilograms of Nepali Ganja in 11 packets in a



black bag. Allegation is that the escort party, of which the petitioner was one of the members out of four, conspired to snatch said Ganja from the smugglers, brought it back to the barrack and sold the same, proceeds of which were distributed amongst members of the escort party, including the petitioner. With such allegation, a charge memo was issued on 7.7.2003. Enquiry was conducted by the Enquiry Officer and thereafter the enquiry report was submitted on 27.2.2004. It is upon the findings of the Enquiry Officer regarding petitioner being guilty of the said allegation that the disciplinary authority after giving opportunity of second show cause has inflicted punishment dated 1.4.2004 dismissing the petitioner from service. The same is assailed in the instant proceeding.

Petitioner's counsel submits that the procedure adopted by the Enquiry Officer was unfair and illegal inasmuch as the witnesses were not produced in his presence in support of the allegations and he was not given any opportunity to cross-examine the witnesses. Specific assertions to this effect made in para 21 of the writ petition have specifically been admitted by the respondent authorities in para 10 of their counter affidavit.

Such a procedural lapse by itself would vitiate the enquiry. The facts, however, are evident from the enquiry report



that no Presenting Officer was presenting the case on behalf of the department before the Enquiry Officer. Bare perusal of the enquiry report shows that the Enquiry Officer himself has recorded the statement of the witnesses. Such a circumstance, where there is no Presenting Officer and the Enquiry Officer assumes the role of Presenting Officer as an agent of the department, strikes at the root of fairness in the proceeding. Standards of fairness required from the Enquiry Officer performing quasi judicial function is of very high degree. The law in this regard is well settled. The Apex Court in the case of State of U.P. vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772 has clearly laid down that such a situation, where the Enquiry Officer performs duties and responsibility of the Presenting Officer acting as an agent of the department the findings of the Enquiry Officer would be unfair and unsustainable in the eyes of law.

These two major infirmities in the procedure adopted in the enquiry are sufficient to conclude that the enquiry suffers with procedural lapses causing grave prejudice to the petitioner and it cannot be said that the charges have been brought to home by the employer by a fair and just procedure. In view of the said infirmity in the proceedings, the order of punishment, which is product of such unfair procedure, would be vitiated and



unsustainable in the eyes of law. The order of punishment dated 1.4.2004 bearing Memo No. 794 is hereby quashed.

Counsel for the petitioner submits that the petitioner would have about one year of service left upon his reinstatement. Taking totality of the circumstances into consideration, this Court would direct reinstatement of the petitioner. The authorities would be at liberty to proceed against the petitioner in respect of the charge memo dated 7.7.2003.

The Court thereafter is faced with the issue as to whether the petitioner being kept away from service due to such illegal procedure, can be deprived of the benefit of back wages. The authorities would also be at liberty to take a decision in respect thereof in terms of the procedure in accordance with law and relevant service rules under which the proceedings were conducted. The petitioner would be obliged to give an affidavit as to whether he was in employment during the period in between so as to consider his claim of arrears/back wages.

The writ petition stands allowed.

SNkumar/-

(Madhuresh Prasad, J.)

AFR/NAFR	NAFR
CAV DATE	N/A
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