

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11635 of 2013

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Sheomuni Prasad Son of Basudeo Prasad Residet of Vill. - Naraura, P.O. Mujan, P.S. Mmohania, Distt. - Kaimur, Presently Posted As Sub - Inspector In Police Headquarter, West Champaran At Bettiah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, New Secretariat Building, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Old Secretariat Building, Patna
3. The Director General of Police, Government of Bihar, Patna
4. Inspector General of Police, Muzaffarpur Range Muzaffarpur
5. The Deputy Inspector General of Police, West Champaran Range, Bettiah
6. Superintendent of Police, West Champaran At Bettiah
7. Deputy Superintendent of Police, Narkatiaganj, West Champaran At Bettiah

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Verma, Adv. Mr. Abhishek Kumar, Adv.
For the Respondent/s	:	Mr. Ramadhar Singh, GP25

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 19-06-2019

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order of punishment contained in Memo No. 1497 dated 16.8.2011 passed by the Superintendent of Police, West Champaran at Bettiah forfeiting the increment for six months as equivalent to one black mark. A further prayer has been made for quashing the order passed by the Deputy Inspector General of Police, West Champaran at Bettiah in connection with Departmental Proceeding



Case No. 34 of 2010 taken against the petitioner contained in Memo No. 99 dated 9.2.2012 affirming the order passed by the Superintendent of Police, West Champaran at Bettiah.

The State has produced the original records of the departmental proceeding to examine as to whether the department has followed proper procedure before inflicting punishment against the petitioner?

At the relevant time, the petitioner was posted as an Officer in-charge in Matiaria police station, West Champaran at Bettiah. While posted there, he was served with the charge-sheet making an imputation against him that while posted as In-charge Police Station, Matiaria P.S. Case No. 39 of 2010 dated 19.6.2010 was lodged under Section 147, 148, 149, 341, 323, 356 and 504 of the Indian Penal Code on the basis of written compliant made by Mukhlal Mahto against Md. Ali Ansari and 22 others and 50-60 other unknown persons making an allegation that they were variously armed in order to create obstruction in discharge of official duty and misbehaved with the Chawkidar.

It has further been alleged that in the Matiaria Police Station, on 9 acre and 43 decimal of disputed land, the S.D.O., Narkatiaganj in Case No. 632 of 2008 in the case of Akhauri Pulin Bihari Verma Vs. Jagdish Prasad Srivastava under Section 146 (1)



of the Cr.P.C., deputed the petitioner as receiver. An auction was conducted, one person had offered Rs. 3 lacs, another Rs. 1.5 lacs, third one Rs. 43,000/- and fourth one Rs. 42,000 but, the last not the least fifth one offered Rs. 41,000/- but, two persons who had offered higher auction amount, left the fray and, as such, the auction should have been given to the next higher bidder i.e. the third bidder but, under the influence of Ajullah Ansari, instead of giving bid to the third one, another person was awarded the bid. In that manner, he had committed dereliction of duty. It has submitted, Chawkidar did not make allegation against any male member but, the petitioner arrayed 17 male members engaged in obstructing the discharge of official duty but, the Supervising Officer found, male members were not there rather the obstruction was created by the 8 to 10 female and children. Actually, they were objecting and obstructing the tilting of the land. The Supervising Officer has submitted the Supervision Note and recommended for initiating a departmental proceeding against the petitioner and, after that, he was served with the charge-sheet and explanation was sought but, he did not file any explanation, whereafter, the enquiry proceeded, four documents have been mentioned as documents for proving the charge against the petitioner including two persons as witness.



It appears from the enquiry report that the proceeding was conducted, the evidence of two persons were taken and, ultimately, the finding has been recorded against the petitioner and finally the Superintendent of Police, West Champaran vide order dated 16.8.2011 inflicted the punishment of forfeiture of salary for six months which is equivalent to one black mark which will not have any effect on the increment of pay. Against that, the petitioner filed appeal and revision but unsuccessfully.

From the records, it appears that the petitioner did file any explanation, he has taken a plea that the letter, by which the explanation was sought, was not served upon him and, on that account, he failed to file his explanation.

Inasmuch as, the enquiry proceeding does not disclose that proper procedure was followed in holding the departmental proceeding as it does not show who was the Enquiry Officer including the presenting officer, record does not show that notice was ever served to the petitioner to participate in the enquiry. All these things indicate missing link which reflects that the enquiry has not been conducted in a manner prescribed under the Police Manual as has been pointed out by the counsel for the petitioner that even one black mark is a major punishment in terms of Rule 828 read with 835 of the Bihar Police Manual. When it is a major



penalty then the obligation is cast upon the disciplinary authority, even the Enquiry Officer to observe fair procedure during the enquiry, it was the bounden duty of Disciplinary Authority, the Enquiry Officer as well as the Presenting Officer should have been appointed with proper information to the delinquent petitioner and the documents should have been proved through witnesses and the petitioner should have been given an opportunity to cross-examine the witness. Though the order of the Superintendent of Police shows that documents were exhibited as well as oral witnesses were examined but, it does not disclose as to whether, ever the petitioner was given any chance to participate in the enquiry put forth his defence before the enquiry officer.

In that view of the matter, this Court finds that the enquiry proceeding has not been conducted in a proper manner. Accordingly, the order of punishment passed by the Superintendent of Police, the order passed by the appellate authority as well as the order of the revisional authority are set aside. The department, if so like, may initiate a fresh proceeding following the proper procedure prescribed in the Bihar Police Manual, take a decision in accordance with law.

In the result, this writ application stands allowed to the extent indicated above.



Let the original record of the compartmental proceeding
produced by the State be returned.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.07.2019
Transmission Date	

