

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7899 of 2006

Most. Asha Devi Wife of late Ashanand Pandey Resident of Village- Morwan,
P.O. and P.S. Siswan, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Director General and Inspector General of Police, Old Secretariat, Patna.
2. The Director General and Inspector General of Police, Bihar, Patna, Old Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Devendra Kumar Sinha Mr. Bajrangi Lal
For the Respondent/s	:	Mr.Anwar Karim, AC to GP 10

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 20-09-2019

Heard counsel for the petitioner and counsel for the
respondents-State.

Petitioner was proceeded against departmentally on the charges that the petitioner had overstayed after availing leave, and in spite of transfer from Deoghar, he was seen at Deoghar.

Being a constable in the police force petitioner was proceeded against departmentally.

Short point raised by learned senior counsel appearing for the petitioner is that enquiry report holding charges proved against the petitioner were served on him for the first time along with order of punishment of dismissal dated 25.03.1997. Petitioner's husband had raised this objection in the writ petition



alleging that he had been deprived of his opportunity of making his comment against the report of the Enquiry Officer holding the charges proved.

Submission is based on requirement of such an opportunity after submission of enquiry report, and before the same is accepted for consideration by the disciplinary authority.

At this juncture, petitioner has a vital opportunity to point out infirmity in the enquiry. The delinquent therefore is entitled to an opportunity at this stage to make his comment on the enquiry report before the Enquiry Officer so as to persuade to disagree with the findings of the Enquiry Officer against the delinquent or to accept those findings which are in his favour. In this case, Enquiry Officer has held charges proved. Law in this regard is also well settled. Copy of enquiry report is required to be given along with show cause.

Nature of consideration may vary, if the disciplinary authority proposes to differ with the same. The important point emerging from the pleadings is that no copy of enquiry report has been served on the petitioner prior to passing the order of dismissal by the disciplinary authority.

Learned Senior Counsel for the petitioner submits that such lapse has caused great prejudice to the petitioner inasmuch as



it is the petitioner's case that before the Enquiry Officer notices were not served on him and as such he was prevented from appearing and participating in the enquiry. Pursuant to show cause issued by the Enquiry Officer, it is his submission that notice has been deemed to be served wrongly. Only if an opportunity had been granted by the disciplinary authority to the petitioner to comment on the findings of the Enquiry Officer, that issue regarding non-service of notice by the Enquiry Officer could have been raised and considered. The effect is that the petitioner has suffered prejudice due to non-service of copy of enquiry report.

The order of disciplinary authority dated 25.03.1997 awarding punishment of dismissal without serving copy of enquiry report and second show cause is found unsustainable. More so, in view of issue of the prejudice caused to the petitioner due to non-service. Order of disciplinary authority dated 25.03.1997 is therefore, quashed. The subsequent order passed by the appellate authority dated 02.11.1998 as well as order dated 13.10.2000 passed by the Director General and Inspector General of Police, Bihar, Patna on Memorial of the petitioner, which merely affirms the illegal order passed by the disciplinary authority must also collapse and are hereby quashed.



On account of such lapse under normal circumstance, this court would remand the matter for proceeding from stage of second show cause. Petitioner however, has passed away during instant proceedings and this case is being persued by wife of the petitioner upon substitution under earlier order of this court dated 22.02.2019. In the circumstance, there is no scope for remanding the matter for reconsideration.

This court would thus consider it appropriate that the petitioner be treated to have retired in service. Entitlement on account of family pension of the substituted petitioner be determined by the authorities and payment should be expedited without any undue delay. Final decision and payment of family pension to the substituted petitioner should be completed within eight weeks from the date of receipt/production of a copy of this order.

Writ petition stands allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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