

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9528 of 2014

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NITESHWAR PRASAD SINGH SON OF SRI KUNJ BIHARI SINGH, RESIDENT OF
VILLAGE BASUDEO VISHUNPUR POST OFFICE VISHUNPUR, POLICE STATION
RUNNISAIDPUR, DISTRICT SITAMARHI

... .. **Petitioner**

Versus

1. The State Of Bihar through its Director General of Police, Old Secretariate Building, Patna, Bihar
2. The Deputy Inspector General of Police, Central Zone, Patna, Bihar
3. The Senior Superintendent of Police, Patna, Bihar
4. The Superintendent of Police, Sheohar, District Sheohar, Bihar

... .. **Respondents**

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Appearance :

For the Petitioner	:	Mr. Lalan Kumar Singh, Advocate
For the Respondents	:	Mr. Ashish Kr. Lal, AC to GA 5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 25-01-2019

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

Petitioner's counsel has vehemently argued that petitioner has been visited with the punishment of dismissal by order dated 5.12.2008 without supplying him a copy of memo of charges. The petitioner alleged that non-supply of charge memo renders all the proceedings subsequent thereto before the Enquiry Officer being violative of the Principle of Natural Justice. He submits that since he was not given a copy of memo of charges there was no opportunity for him to appear in the proceedings before the Enquiry Officer. Being deprived of his opportunity by non-supply of charge memo order of punishment dated 5.12.2008



and subsequent order issued by the Appellate Authority dated 11.8.2012 rejecting petitioner's appeal, are unsustainable.

It is submitted that charges were in respect of over staying after availing eight days leave. Charges are also that while being away from service he was made accused in three criminal cases of very grave nature, namely, (i) Deoghar Police Station Case No. 186 of 1995 dated 8.8.1995 under sections 376/34 of the Indian Penal Code, (ii) Deoghar Police Station Case No. 187 of 1995 dated 9.8.1995 under sections 448/504/386/34 of the Indian Penal Code as also (iii) Deoghar Police Station Case No. 28 of 1997 dated 27.1.1996 for the alleged offence under sections 448/376/34 of the Indian Penal Code. The petitioner was also taken into custody in connection with these cases.

Petitioner was a constable in the police service at the relevant point of time. On specific query made from the petitioner's counsel whether non-supply of charge memo has been raised before the authorities he points out with reference to his reply to the second show cause dated 8.9.2003 that he has raised an issue regarding non supply of charge memo before the Disciplinary Authority when he was afforded opportunity to respond to the enquiry report. Pleadings in his reply to the second show cause at paragraph 14 is as follows:-



“मुझे ज्ञापांक 12193/र0का0 दिनांक 30.11.94 मुझे प्राप्त नहीं हुआ है। मात्र सूचना भेज देना दिखला देना प्राप्ति का प्रमाण नहीं होता है।”

The petitioner in his reply to the second show cause has referred to non-supply of communication dated 30.11.1994 bearing Memo no. 12193. Charge memo is admittedly of a different date, i.e., dated 28.12.1996. The issue regarding non-supply of the charge memo dated 28.12.1996 has not been raised by the petitioner before the Disciplinary Authority. Order of dismissal as well as order passed by the Appellate Authority records that the entire procedure was adopted after issuing notice to the petitioner.

The proceeding continued for about five years. Another relevant fact is while proceedings were being conducted upon submission of charge memo by the Senior Superintendent of Police, Patna, the petitioner was in Patna for most of the period of the proceedings. However, it is submitted that the petitioner had no knowledge of the on going proceedings.

From the order passed by the Appellate Authority it is apparent that on going through the records Appellate Authority has recorded that during 21 sittings in the proceedings, petitioner as well as witnesses were noticed during course of proceedings. Records of the enquiry therefore do not support petitioner's contention that he was not served with the charge memo and the



same was served for the first time at the stage of second show cause when he had opportunity to raise this vital issue of non-supply of charge memo. This Court is therefore of the opinion that the plea regarding non-supply of charge memo taken in the writ proceedings, is not founded on the records of the case.

He, who chooses not to avail of the opportunity granted to him, cannot take the plea of non-compliance of principle of Natural Justice. Once the petitioner has chosen not to respond to charge memo or appear before the Enquiry Officer he cannot be permitted to raise a plea that he has not been allowed adequate opportunity before the Enquiry Officer and as such entire proceedings stands vitiated.

Another plea raised by learned counsel for the petitioner is that during pendency of the instant proceedings three criminal cases which form basis of a grave punishment of dismissal from service have also been concluded. Petitioner's counsel submits that the petitioner has honourably been acquitted in all the three cases.

Order of acquittal in the three cases are annexed in the petitioner's supplementary affidavit. The three orders which have been annexed are (i) dated 3.4.1996 (Deoghar Police Station Case No. 186/95), (ii) dated 10.3.2015 (Deoghar Police Station Case



No. 187/15) and (iii) dated 8.7.2014 (Deoghar Police Station Case No.28/96).

Petitioner's counsel would thereafter rely upon the judgment of the Hon'ble Apex Court in case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And ors; 1999(3) SCC 679**. The petitioner has also placed reliance on the subsequent judgment in case of **G.M.Tank Vs. State of Gujarat and others; (2006) 5 SCC 446** to contend that in view of his honourable acquittal in the criminal cases which form basis of conclusion of his severe punishment, authorities would be obliged to re-consider the matter with reference to the aforesaid acquittal in the criminal cases.

Petitioner's counsel also submits that in the case of **Bhagirath Mahto Vs. The State of Bihar and other; 2008(2) PLJR 597**, this Court relying upon the said judgments allowed the delinquent consequential benefits of honourable acquittal in the criminal case forming basis of petitioner's dismissal by the departmental authorities.

It is submitted by learned counsel for the petitioner that, referring to the aforesaid judgments and relying upon petitioner's acquittal in the aforesaid three criminal proceedings, he would approach the Deputy Inspector General of Police, Central Zone,



Patna (respondent no.2) claiming benefits of acquittal in the proceedings in light of the law as declared by the Hon'ble Apex Court in the cases discussed herein above.

The petitioner would be at liberty to do so.

Writ petition is disposed of with liberty to the petitioner to avail of the remedy before respondent no.2 by making a detailed representation claiming the benefits of the Supreme court judgment relied upon by the petitioner within a period of eight weeks.

Learned counsel for the petitioner submits that the respondent authorities may be directed to consider petitioner's claim in light of Apex Court within a fixed time frame.

In the opinion of the court, four months would suffice to consider the claim of the petitioner by the authorities.

Writ petition stands disposed of.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2019.
Transmission Date	NA

