

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20132 of 2012

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Kavi Chetry, Son of Amar Bahadur Chetry, Resident Of Village Salua, P.S.
Kharagpur, District West Midnapur, West Bengal

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Director General-cum-Inspector General of Police, Bihar, Patna.
2. The Inspector General, Bihar Military Police, Central Zone, Bihar, Patna
3. The Commandant, Bihar Military Police-1, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Chandra, Advocate
For the Respondent/s	:	Mr. Anuj Kumar, AC to GP-24

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 16-05-2019

Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is challenging the order dated 23.05.2008 contained in Memo No.799/2008 passed by the Commandant, Bihar Military Police-1, Patna whereby and whereunder the petitioner has been dismissed from service differing with the report of the enquiry officer. The petitioner filed an appeal before the Deputy Inspector General, Bihar Military Police, Central, Patna and the same has been rejected vide Memo No.82 dated 20.02.2009 and the memorial was also filed by the petitioner that too has been rejected vide Memo No.745/P-03 dated 29.02.2012.



The petitioner was proceeded departmentally on account of fact that he was caught with illegal firearm with one live cartridge in the State of West Bengal, on that account, a criminal case vide Jhargram P.S. Case No.8 of 2006 (G.R. No.27/06) was instituted, he was proceeded in a criminal case, that follows the initiation of the departmental proceeding by the Disciplinary Authority, accordingly, charge sheet was issued vide Memo No.1641 dated 13.07.2007 making an allegation that the petitioner was caught with illegal loaded pistol with one live cartridge, the enquiry officer has submitted the report, but he did not find charges having been proved against the petitioner and, accordingly, the enquiry officer has given the benefit of doubt.

From the enquiry report, it appears that the enquiry officer has recorded that as the criminal case is pending, in such circumstances, the proceeding may be awaited till the final disposal of the criminal case, but at the same time, he said that as the delinquent is a member of discipline force of Bihar Military Police, as such, his act would come within indiscipline, on account of lodging of FIR against the petitioner, on that account, position of the department has been lowered down and, as such, charges have been found partly proved, but the report does not show that he has recorded any finding with regard to the merit of the case,



but the Disciplinary Authority without issuing show cause and giving any explanation, looking to the enquiry report submitted by the enquiry officer, straightway differed and inflicted the punishment that has been affirmed up to the stage of memorial.

The short point has been raised by the petitioner that the enquiry officer has not found charges proved, but on technical ground, recorded a finding that charges have been found partly proved, but the basis of finding, is based upon lodging of criminal case against the petitioner on account of possession of the illegal arms, as per the petitioner, he has been acquitted in the criminal case as the prosecution has failed to prove the charge of possession of illegal arms.

In such view of the matter, the orders dated 23.05.2008, 20.02.2009 and 29.02.2012 are set aside. The matter is remanded back to the Disciplinary Authority-cum-Appointing Authority. If the Authority wants to differ on merit with the enquiry report, he will record his difference of opinion, serve the same on the petitioner, in turn, the petitioner will be at liberty to file his explanation following the Authority will take decision, but while deciding all the issues, the authority will consider the judgment which has been passed in criminal case wherein possession of the arms has not been proved and decide the case of the petitioner



within a period of four months from the date of first appearance of the petitioner along with a copy of this order subject to cooperation extended by the petitioner. The matter will be initiated from the stage of recording the finding of the disagreement.

As the matter is remanded, the petitioner will be treated to have been under suspension and will be entitled to subsistence allowance.

With the aforesaid observations and directions, this writ application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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