

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10217 of 2019

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Pappu Kumar S/o Shri Uma Shankar Sharma resident of Village- Dumra, P.S.
Konch, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Magadh Range, Gaya.
4. The Senior Superintendent of Police, Gaya.
5. The Deputy Superintendent of Police, Sherghati, Gaya.
6. The Inspector of Police-cum-S.H.O. Civil Lines Police Station, Gaya, District- Gaya.
7. The Sub Divisional Officer, Tirhut Nahar Sub Division, Banchihuli, Bettiah.
8. Jitendra Singh son of Damodar Singh resident of Village and P.O. Makhdumpur, P.S. Tankuppa, District- Gaya.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Uma Shankar Mr. Jitendra Kr. Sagar, Advocates
For the Respondents	:	Mr. Md.Nadim Seraj, GP5 Ms. Shalini, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 18-12-2019

Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

2. The petitioner is aggrieved by the order
contained in Memo No. 339 dated 20.02.2019 passed by
respondent no. 3 (Annexure-2) confirming the order contained
in Memo No. 6277 dated 30.11.2018 (Annexure-3).

3. Learned counsel appearing on behalf of the



petitioner submits that the petitioner has been inflicted major punishment of dismissal from service. He submits that the petitioner has been condemned unheard in the proceeding. With reference to paragraph 8 onwards of the writ petition, learned counsel submits that departmental proceedings thereto were initiated but neither any witness was examined in support of the charges nor any other evidence was adduced on behalf of the Presenting Officer in the departmental proceeding. It is submitted that even at the stage of inflicting punishment, second show cause notice was not served upon the petitioner.

4. It is true that the standard of proof in departmental proceeding is preponderance of probability but the respondents were obliged to take proper care while passing the order inflicting major punishment upon the delinquent. In the case of **Union of India Vs. H.C. Goel** in **AIR 1964 SC 364**, the Apex Court has made observations in paragraph 27 thereof which are reproduced hereinbelow :-

“Now, in this state of the evidence, how can it be said that respondent even attempted to offer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that respondent did not offer him a bribe. He merely refers to the fact that respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence



against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established.”

5. The Apex Court had occasion to summerise the basic principle to be followed in the departmental proceedings in the case of **Kumaon Mandal Vikash Nigam Ltd. vs. Girja Shankar Pant and others reported in (2001) 1 SCC 182**. The principle laid down by the Apex Court in **Kumaon Mandal Vikash Nigam** (supra) is still holding the field. In the case of **Roop Singh Negi Vs. Punjab National Bank & others reported in 2009 (2) SCC 570** the Apex Court once again echoed the compliance of natural justice in the departmental proceeding. In view of the aforesaid principle in conduct of the



departmental proceeding, the Court finds it difficult to accept the decision of the respondents in inflicting punishment of dismissal from service of the petitioner as justified.

6. In addition thereto, from the materials on record, it does not appear that the petitioner was issued second show cause notice with a copy of the enquiry report. The Apex Court had occasion to embark upon the necessity of issuing second show cause notice in the case of **Union of India vs. Mohd. Ramzan Khan** reported AIR 1991 SC 471. The view was subsequently approved by the Constitution Bench of the Apex Court in the case of **Managing Director, ECIL, Hyderabad Vs. B. Karunakar** reported in (1993) 4 SCC 727.

7. This Court has the advantage of perusing the order-sheet in the departmental proceeding which appended as Annexure-B series which indicates that only formality in the departmental proceeding was completed.

8. In view of the discussion made hereinabove, the Court is constrained to allow the writ petition and quash the orders inflicting major punishment of dismissal from service upon the petitioner. Since the Court has allowed the writ application on account of the procedural impropriety/infirmity, the Court directs the respondents to initiate a fresh proceeding in



view of the infirmity as noticed in the judgment of the Constitution Bench in the case of **Managing Director, ECIL, Hyderabad (supra)**.

9. With the aforesaid, the writ petition stands allowed. The petitioner shall be entitled to be reinstated in service but consequential benefits shall abide by the final outcome of the decision in a fresh proceeding.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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