

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17783 of 2015

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Kailash Paswan, Son of Late Lalu Paswan, Resident of Village- Mahesh Khunt, P.S. Mahesh Khunt, District Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Bihar, Patna.
3. Director General of Police, Bihar.
4. The Regional Inspector General of Police, Bhagalpur Region, Bhagalpur.
5. Deputy Inspector General of Police, Bhagalpur, Eastern Region, Bhagalpur.
6. Superintendent of Police, Police District Naugachia, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
		Mr. Pankaj Kumar, Advocate
For the Respondent/s	:	Mr. Brajesh Kumar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 22-05-2019

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

In the present case, the petitioner the challenging the order dated 06.03.2013 bearing Memo No. 333/Sa. Sha. passed by Deputy Inspector General of Police, Eastern Region, Bhagalpur whereby and whereunder he has been dismissed from service of the post of Sub-Inspector and that has been affirmed in appeal vide order dated 04.03.2015 bearing Memo No.436/Sa.Sha. passed by the Inspector General of Police, Bhagalpur Region, Bhagalpur. He has filed Memorial before the Director General of Police, who has



returned the same having stated that the Memorial filed by the petitioner is not maintainable.

The short fact of this case is that the petitioner entered into the service in Police Department as Constable on 17.06.1977 and was promoted as Sub Inspector of Police. At the relevant time, he was posted at Naugachiya. A Vigilance Case bearing Vigilance P.S. Case No.59/2011 was instituted at the instance of one Mahesh Prasad Singh against the petitioner making an allegation of extortion of illegal money in connection of a piece of land, whereupon the petitioner was put under suspension, he was taken in custody, whereafter the Department has initiated a departmental proceeding against the petitioner by issuing Prapatra 'K'. It has been submitted that the inquiry was conducted by the group of the persons, who were facing departmental proceeding, not the enquiry was conducted in one to one basis. The notice was issued to the petitioner and the same was served in his house, which was received by his wife as at the relevant time, he was in jail. The petitioner through his wife had made a request for extension of time, but instead of extending the time, the departmental inquiry was conducted and concluded in his absence, when he was granted bail, he approached the Authority to facilitate him to participate in the departmental proceeding and enquiry should be conducted in



his presence, but the request was turn down, ultimately, the petitioner was dismissed from service and which has been affirmed by the Appellate Authority.

The short point has been raised by the petitioner that in this case while the petitioner was in jail the entire departmental proceeding was conducted, where the probity lies to the Department that while he was in jail either he should have been brought from the jail custody to participate in the enquiry or the enquiry should be adjourned till the grant of bail and sufficient opportunity should have been given to participate in the inquiry, but in the present case, the enquiry has been conducted behind his back without following the proper procedure of law and they have not followed the minimum level of fairness in holding the departmental proceeding.

The State has tried to justify the action of the Department, but in the present case, inquiry has not been conducted in fair manner, without understanding the fairness of inquiry, is hallmark for any administrative action, it cannot be done in an arbitrary or whimsical manner that too in a departmental proceeding and it was expected from the Department that they should conduct the enquiry fairly and properly so that he may get an opportunity to participate in the proceeding.



Accordingly, the order dated 06.03.2013 of Disciplinary Authority and the order dated 04.03.2015 of Appellate Authority are set aside and the matter is remanded back to the Disciplinary Authority for converting the proceeding under Section 43 (b) of CCA Rules, 2005 and conducting the enquiry in accordance with law.

However, it is made clear that any entitlement will be subject to the result of the departmental proceeding.

The whole exercise should be completed within a period of five months from the date of receipt/production of a copy of this order.

(Shivaji Pandey, J)

V.K.Pandey/-

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