

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19343 of 2018

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Samsher Khan Son of Hanif Khan Resident of New Police Line, P.S.- Budha Colony, District- Patna, at present residing at Village- Pakdi, P.O.- Kalyanpur, P.S.- Bihiya, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Central Range, Patna.
4. Sri Manu Maharaj, The Senior Superintendent of Police, Patna.
5. The Assistant Superintendent of Police-cum-Enquiry Officer-cum-Sub-Divisional Police Officer, Phulw null null

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nawal Kishore Singh Mr.Upendra Mishra
For the Respondent/s	:	Mr.Prabhat Kumar Verma -AAG-3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 06-09-2019 The petitioner, at the relevant point of time, was posted as Havildar in Patna District Police Force. A departmental proceeding was initiated against him with the issuance of charge Memo No. 4521 dated 06.05.2017 by the Senior Superintendent of Police, Patna. Assistant Superintendent of Police, Patna, Mr. Yogendra Kumar was appointed as conducting Officer.

2. The charge memo has been brought on record by way of Annexure-3 to the writ application from which it transpires that on the basis of secret information a police party



headed by the Officer Incharge, Budha Colony, Police Station had conducted raid in the new Police Lines, Patna and found the petitioner and another constable in inebriated condition, creating and were clamouring, creating disturbance in the police lines. They are said to have become aggressive after having seen the police party. They were, however, overpowered, apprehended and taken to Patna Medical College and Hospital for their medical examination and based on breath analyzer test carried out in the hospital, they were found to have consumed alcohol. An F.I.R. was registered against them as Budha Colony P.S. Case No. 146 of 2017 for the offences punishable under Sections 290/34 of the Indian Penal Code and Sections 37 (B) (C) of the Bihar Prohibition and Excise Act, 2016. They were remanded to judicial custody.

3. The occurrence was of 03.05.2017. The FIR was registered on 04.05.2017. The charge memo was issued to the petitioner on 06.05.2017. It is evident from Annexure-3, the charge memo, that the same was required to be served on the petitioner through the Superintendent, Central Jail, Beur, where the petitioner was in custody after his remand. It is specific case of the petitioner that the charge memo was never served upon him when he was in custody. This crucial fact has remained



uncontroverted. Subsequently, the conducting Officer was changed and one Rakesh Kumar, Assistant Superintendent of Police, Phulwarishariff was appointed as conducting Officer, by an order issued by the Superintendent of Police on 11.05.2017. It appears that 20.05.2017 was the date fixed for the departmental proceeding before the conducting Officer when the petitioner had appeared. The petitioner had requested the conducting Officer to supply him the charge-sheet. An order dated 20.05.2017 passed by the conducting Officer has been brought on record by way of Annexure-5 from which it appears that on the said date, for the first time, the charge-sheet was served on the petitioner. The petitioner was asked to submit his final written statement of defence by very next date, i.e. 21.05.2017. The petitioner submitted his written statement of defence on 21.05.2017. He, however, mentioned in his written statement of defence that he did not have any knowledge about the departmental enquiry prior to 20.05.2017 and he was allowed only one day time to submit his written statement of defence. He stated in his written statement of defence that in case the witnesses had already been examined in the departmental enquiry in his absence, he should be allowed to cross-examine them. It appears from the enquiry report of the



Inquiry Officer submitted on 30.05.2017 that, the petitioner was allowed to cross-examine the witnesses on 24.05.2017, who were already examined in the departmental enquiry behind his back. It is evident from the dates of event as mentioned in the enquiry report that witnesses were examined in support of the charges even before the charge-sheet was served upon the petitioner on 24.05.2017 for the reason that on 24.05.2017, the petitioner was given an opportunity to cross-examine the witnesses, whereas the charge-sheet was served on him on 20.05.2017.

4. The Inquiry Officer found the charge against the petitioner to have been proved in his report submitted on 30.05.2017.

5. It is evident thus, that for the occurrence which is said to have taken place on 03.05.2017 the departmental enquiry stood concluded by 30.05.2017 with the submission of the enquiry report by the Inquiry Officer, though the charge-sheet was served on the petitioner on 20.05.2017.

6. Acting on the report of the Inquiry Officer, the Senior Superintendent of Police, Patna issued second show cause notice to the petitioner asking him to explain why punishment of dismissal from service may not be imposed on



his for his proved misconduct. The petitioner submitted his response to the second show cause notice on 20.07.2017, questioning the manner in which the departmental enquiry was held and the findings were recorded by the Inquiry Officer. He pleaded that he would be submitting his explanation in his defence only after he was given due opportunity to defend his case after cross-examining the witnesses and getting examined the defence witnesses. The petitioner's request was rejected by communication dated 24.08.2017 by the Senior Superintendent of Police and he was asked to submit his reply to the second show cause notice. The petitioner submitted his response and again raised the issue, which he had earlier raised. The Senior Superintendent of Police by order dated 20.11.2017 has imposed upon the petitioner the punishment of dismissal from service. The petitioner's appeal before the Deputy Inspector General of Police, Central Range, Patna has been rejected by an order dated 18.01.2018. He had preferred memorial before the Director General of Police against the disciplinary action of imposition of punishment of dismissal from service, which has been turned down with issuance of an order dated 06.07.2018.

7. In the background of the aforesaid facts, the petitioner has challenged the orders of the disciplinary authority



dated 20.11.2017, the appellate authority dated 18.01.2018 and the Director General of Police, Bihar dated 06.07.2018.

8. Mr. Nawal Kishore Singh, learned counsel appearing on behalf of the petitioner, assailing the impugned order has submitted that the petitioner was not given reasonable opportunity to defend himself in the departmental enquiry. He has submitted that allowing only one day time to submit written statement of defence was not only in breach of principles of natural justice but also in violation of a mandatory statutory requirements under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'). He has submitted that despite requests having been made by the petitioner to allow him to produce defence witnesses, the enquiry Officer capriciously declined the request and submitted his report in utter haste, holding the charge against the petitioner to be proved.

9. Mr. Prabhat Kumar Verma, learned A.A.G.-3 appearing on behalf of the State-respondents, on the other hand, has defended the action of the disciplinary authority in imposing punishment of dismissal from service with reference to averments made in the counter affidavit filed on behalf of the respondents. He has argued that considering the nature of



proved misconduct, a proportionate befitting punishment has been imposed in this case.

10. This is to be noted that no averment made in the writ application has been controverted in the counter affidavit. I find force in the submission advanced on behalf of the petitioner that a day's time given to the petitioner to submit his written statement of defence by the Inquiry Officer after serving upon him a copy of the charge-sheet cannot be said to be at all reasonable. It has to be borne in mind that the petitioner held a post of *Havildar* and a superior authority of the rank of Assistant Superintendent of Police was asking him to submit his written statement of defence within 24 hours. He could not have possible thought of resisting the discretion of his superior to submit his written statement of defence in such short span of time. Though he submitted his written statement of defence on 21st of May, 2017, he appears to have feebly protested the action of the Inquiry Officer of asking him to submit his written statement of defence within one day.

11. The Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 lay down a detailed procedure for imposition of major penalties on the Government Servants. Sub-section (1) of Section 17 mandates that no order imposing



any of the penalties specified in Clauses (vi) to (xi) of Rule 14 shall be made without holding an inquiry, in the manner provided in the Rules. Punishment of dismissal from service is provided in Rule 14 of the Rules. Sub-section (4) of Section 17 requires the disciplinary authority to deliver or cause to be delivered to the Government Servant a copy of the articles of charge, and a list of documents and witnesses by which each article of charge are proposed to be sustained and ask the Government Servant to submit, 'within such time as may be' specified, a written statement of his defence.

12. In the present case, the articles of charge was served on the petitioner by the Inquiry Officer when he had appeared before him to face the enquiry without service of any charge-sheet. Sub Rule (6) of Rule 17 requires a disciplinary authority, where it is not the inquiring authority, to supply to the Inquiry Officer a copy of the order appointing the Presenting Officer. It does not appear from the charge memo or the report of the inquiry Officer that any presenting officer was appointed. It, rather, appears from the report of the Inquiry Officer that he himself was prosecuting the petitioner. Examination of witnesses behind the back of the petitioner even before service of charge-sheet on him, in my view, is gross violation of



principles of natural justice and contrary to specified provisions under Rule 17 of the Rules.

13. I have noticed from the petitioner's written statement of defence that he had made a definite request to allow him to produce defence witnesses which was apparently turned down by the Inquiry Officer without any valid reason.

14. In my opinion, the entire proceeding vitiates also because one day's time allowed to the petitioner to submit his written statement of defence in response to the charge-sheet cannot be said to be allowing reasonable opportunity to the petitioner to effectively deal with the charges. The expression "within such time as may be specified" for a Government servant to submit his written statement of defence in response to the articles of charge under Section 17(4) of the Rule will essentially mean within "such reasonable time". This is because the principles of natural justice require adequate and reasonable opportunity to be heard when an action is proposed adverse to the interest of a Government servant. Reasonable time to be specified by the disciplinary authority for a Government servant to respond to the charge should be such as would be reasonably considered to be appropriate by a man of ordinary prudence to respond to the charge and put forth his defence effectively.



Reasonableness is the hallmark of every administrative or quasi-judicial action/function.

15. Every action of the State must be just, fair and reasonable for fairplay and natural justice are part of fair public administration as has been held in case of **M.J.Sivani Vs. State of Karnataka** reported in **(1995) 6 SCC 289**. The Apex court has held that when action or orders of the State within the meaning of Article 12 of the Constitution of India visit the citizen with civil consequences, fairness and justness require that in appropriate case, the affected person must be given an opportunity to meet the case. Such opportunity, in my view, must be adequate and sufficient.

16. In view of the above, I am of the considered opinion that the entire disciplinary proceeding against the petitioner stands vitiated right from the stage when the petitioner was asked to submit his written statement of defence within one day from the date of service of the charge-sheet upon him. The disciplinary action taken on the basis of such enquiry, therefore, cannot be sustained.

17. Accordingly, the impugned orders dated 20.11.2017 passed by the disciplinary authority, 18.01.2018, passed by the appellate authority and the Memorial dated



06.07.2018 passed by the Director General of Police are set aside.

18. Let the petitioner be reinstated in service forthwith and be paid his back-wages and other consequential benefits as if he was never dismissed from service.

19. It will, however, be open to the disciplinary authority to proceed against the petitioner after giving him reasonable opportunity of at least a fortnight to submit his written statement of defence and thereafter conclude the proceeding thereafter, in accordance with the extant Rules.

20. This application is allowed.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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