

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5183 of 2015

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Rajesh Kumar Son of Rajendra Paswan, Resident of Village- Sare, P.O. Sare,
P.S. Sare, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Bhagalpur Range, Bhagalpur.
4. The Deputy Inspector General of Police, Munger Range, Munger.
5. The Superintendent of Police, Sheikhpura
6. The Deputy Superintendent of Police Head Quarter, Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Singh
For the Respondent/s : Mr.Shilpa Singh, GA 2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-05-2019

Heard counsel for the petitioner and counsel for the
respondent-State.

Petitioner, a constable was proceeded against on the
charge of soliciting Rs. 3500/- from each candidate while
conducting physical medical examination at the time of
recruitment of constables. Charge memo contains charge dated
11.09.2013 issued by the Superintendent of Police, Sheikhpura.
Proceeding thereafter commenced before the Enquiry officer. The
same resulted in the order of punishment. Petitioner was awarded
compulsory retirement from service.

Order of punishment is dated 07.05.2014 issued by the
Superintendent of Police, Shikhpura. Petitioner's appeal against the



said order has been rejected by order dated 07.10.2014 issued by respondent no. 4 Deputy Inspector General of Police, Munger Range, Munger. Both orders are challenged by the petitioner.

Short submission of Mr. Singh, counsel appearing for the petitioner is that on the basis of law as laid down by the Apex Court in the case of State of Uttar Pradesh vs. Saroj Kumar Sinha reported in (2010) 2 Supreme Court Cases 772, entire proceeding is vitiated on account of there being no Presenting officer. Mandatory and statutory provision of rules 17 (14) of Bihar CCA Rules have been violated in the proceeding. Enquiry officer/conducting officer examined the witnesses and evidence purporting to discharge duty of the Presenting officer.

Enquiry officer after examining the witnesses, evidence has himself concluded finding of guilt. Such procedure in opinion of this court adopted by the Enquiry officer is contrary to procedure prescribed under rules 17 (14) of the Bihar CCA Rules as well as the law laid down by the Apex Court in the case of Saroj Kumar Sinha (supra).

Law is well settled. The Disciplinary Authority performs quasi judicial functions. He is required to maintain absolute fairness in conduct of departmental enquiry. In a case like the instant one, when he himself examines the evidence and witness



on behalf of the department, and proceeds to pass final order and recording findings based on such examination, serious prejudice is caused to the delinquent. Procedure adopted by the Enquiry officer is grossly illegal, unfair and violative of principles of natural justice, as also violative of mandatory procedure prescribed under rules 17 (14) of the Bihar CCA Rules.

On the said ground alone the entire proceedings are vitiated. Order of punishment issued by the Superintendent of Police, Sheikhpura dated 07.05.2014 is therefore, unsustainable in law and is hereby quashed. The order of appellate authority dated 07.10.2014 has merely affirmed the said illegal order and the same must also collapse. As consequences of quashing of order of punishment, petitioner would be entitled to all consequential benefits. It is open to the Disciplinary Authority to proceed in the matter in accordance with law.

In view of the aforesaid observations/directions, writ petition is allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2019
Transmission Date	NA

