

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19228 of 2016

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Ram Charitra Singh, Son of Late Nanhak Singh, resident of Village - Sima,
P.O. Hafua, P.S. -District Chatra (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Home (Police) Dept. Govt. of Bihar, Patna
3. The D.G. Cum I.G. of Police, Bihar, Patna
4. The I.G. of Police, Darbhanga Zone, Darbhanga
5. The D.I.G. Police, Darbhanga Range, Darbhanga
6. The S.P., Darbhanga
7. The Senior S.P., Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Kumar, Singh, Advocate
		Mr. Priya Ranjan Singh Advocate
For the Respondent/s	:	Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 02-11-2021 Heard learned counsel for the parties.

2. While posted as Stick Orderly of Superintendent of Police, Darbhanga, a disciplinary proceeding was initiated against the petitioner on the charge of misconduct on the basis of a complaint made by a female to the effect that the petitioner had physically exploited on false assurance of marrying her.

3. An Enquiring Authority was appointed to enquire into the alleged misconduct. No Presenting Officer was appointed. The Enquiring Authority, in his report did not find the allegation against the petitioner of having physically exploited the complainant on false promise of marriage.



However, he recorded a finding that the petitioner developed proximity with the complainant and used to visit her place which tarnished the image of the police force.

4. Based on the said finding recorded by the Enquiring Authority, the Deputy Inspector General of Police-cum-Disciplinary Authority has imposed punishment of dismissal from service by an order issued vide Memo No. 1623 dated 11.11.2015. The said order dated 11.11.2015, passed by the Disciplinary Authority is under challenge in the present writ application.

5. The petitioner's appeal has been dismissed by the Inspector General of Police, Darbhanga Region, Darbhanga by an order dated 11.02.2016, which has also been challenged in the present writ application. The petitioner preferred a memorial application before the Director General of Police, Bihar against the order of dismissal and the order passed by the Appellate Authority, which has been rejected by an order dated 12.05.2016 issued vide Memo No. 2685 dated 13.05.2016. The petitioner has put to challenge the said order of the Director General of Police dated 12.05.2016 also.

6. Mr. Rajiv Kumar Singh, learned counsel appearing on behalf of the petitioner has submitted that the entire



departmental proceeding stands vitiated because of non-appointment of the Presenting Officer and the Enquiring Authority conducting departmental enquiry in the absence of any Presenting Officer to present the case of the department to establish the charge. He has submitted that the Enquiring Authority has failed to discharge the function as is expected of a quasi judicial authority, by assuming the role of a prosecutor for proving the charge framed against the petitioner in the departmental proceeding. He has also submitted that the finding recorded by the Enquiring Authority cannot be said to be correct based on due appreciation of evidence inasmuch as no evidence was adduced by the department in support of the charge. He has challenged the impugned order of dismissal on various other grounds also.

7. Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that absence of a Presenting Officer has not caused any prejudice to the petitioner, inasmuch as, the petitioner was given ample opportunity to defend himself in the departmental enquiry and to disprove the charge levelled against him. He has further submitted that the complainant was examined during course of departmental enquiry who supported the allegation made by her based on



which the departmental proceeding was initiated against the petitioner.

8. This Court need not go into other aspects of the matter than the fact that admittedly the Disciplinary Authority failed to appoint any Presenting Officer to present the case of the Department in support of the charge before the Enquiring Authority. It has been repeatedly held by the Supreme Court and this Court that an Enquiring Authority is a quasi judicial authority and in no circumstance it can assume the role of a prosecutor. Apparently, the Enquiring Authority, in the absence of any Presenting Officer, appears to have assumed the role of a prosecutor in the departmental enquiry and recorded his finding, holding the charges to have been proved, which is impermissible.

9. Learned counsel for the petitioner is correct in his submission in this regard. The entire proceeding, in the Court's opinion, stands vitiated in the absence of appointment of a Presenting Officer, inasmuch as, there was none before the Enquiring Authority to produce evidence for the Department in support of the charge. It was obligatory for the department to have presented its case before the enquiring authority if it intended to prove the charge against the petitioner.



10. The impugned order dated 11.11.2015, passed by the Deputy Inspector General of Police is accordingly set aside. Orders passed by the Appellate Authority and that of the Director General of Police dated 11.02.2016 and 12.05.2016 are also set aside.

11. Since the Court has arrived at a conclusion that the entire disciplinary proceeding is vitiated because of non-appointment of a Presenting Officer, consequent upon which the Enquiring Authority failed to discharge its function as a quasi judicial authority, it is directed that the petitioner shall be entitled to payment of full back wages for the period during which he remained out of service because of the order of dismissal which has been held to be illegal and unauthorised. All the back wages must be paid to the petitioner within three months from the date of receipt/production of a copy of this order.

12. It has been informed at the bar that the petitioner has already attained the age of superannuation on 31.07.2016 and, therefore, there is no question of reinstatement in service.

13. This application is accordingly allowed.

(Chakradhari Sharan Singh, J)

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