

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16450 of 2016

Umashankar Dubey Son of Sri Muni Dubey Resident of Village- Basaon
Khurd, P.S.- Itarihi Mahila Thana, District- Buxar.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Director General of Police, Old Secretariat, Bihar, Patna.
3. The Inspector General of Police, Bihar, Patna Range.
4. The Additional, Director General of Police, Bihar, Patna.
5. The Deputy Inspector General of Police, Bihar, Patna.
6. The Superintendent of Police, Nalanda.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Awadhesh Kumar Mishra
	:	Mr.Ajay Kumar
For the Respondents	:	Mr.Md.Nashrul Hoda Khan (SC 1)

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

7 21-10-2021 The petitioner has put to challenge an order dated 12.03.2015 passed by the Deputy Inspector General of Police, Central Range, Patna whereby he has been dismissed from service. The petitioner at the relevant point of time was holding the post of Assistant Sub Inspector of Police at Hilsa Police Station in the District of Nalanda. The petitioner's appeal against the said order dated 12.03.2015 has been rejected by the Inspector General of Police, Patna by an order dated 30.09.2015. Further, his memorial has been rejected by the Director General of Police by an order dated 20.04.2016. It



transpires from the materials available on record that on the allegation that the petitioner was demanding bribe to extend undue favour, a trap was laid by the Vigilance Investigation Bureau, which led to the petitioner's arrest and registration of an F.I.R. against him.

A departmental proceeding was also initiated against the petitioner with substantially same set of charge with the issuance of charge sheet and appointment of an Enquiring Authority. The Enquiring Authority submitted his report holding the charge to have been proved. It is the petitioner's case that the enquiry report was not made available to him. It is the case of the State respondents, on the other hand, that the petitioner was put to second show cause notice seeking his explanation on the findings recorded by the Enquiring Authority along with which a copy of the enquiry report was supplied to him. This statement made on behalf of the State respondent has been refuted by the petitioner in the supplementary affidavit. It is noteworthy that the petitioner had submitted his reply to the second show cause notice taking specific plea that a copy of the enquiry report was not served upon him. The Disciplinary Authority has passed the impugned order on 12.07.2015 agreeing with the report of the Enquiry Authority, without



addressing the petitioner's contention that the enquiry report was not supplied to him.

Mr. Awadhesh Kumar Mishra, learned counsel appearing on behalf of the petitioner has submitted that the impugned order does not discuss the specific plea taken by the petitioner in his reply to the second show cause notice that copy of the enquiry report was not supplied to him before he was made to submit his explanation in response to the second show cause notice. He has secondly submitted that it is evident from the order whereby a disciplinary proceeding was initiated against him that no presenting officer was appointed. He submits that in the absence of the presenting officer, apparently the Enquiring Authority himself acted as the prosecutor. Further, on the basis of materials, which were not proved during the departmental proceeding, he recorded his finding to the effect that the charge of corruption against the petitioner stood proved. He has further submitted that neither any member of the raiding party nor any person present at the place of occurrence was examined during the departmental enquiry and for this reason also the decision of the Disciplinary Authority deserves interference.

Learned counsel appearing on behalf of the State of



Bihar has submitted that the report would show that the petitioner was caught red handed by the Vigilance Investigation Bureau and, therefore, on the basis of materials made available during the course of departmental enquiry, the decision of the Disciplinary Authority to impose punishment of dismissal from service cannot be said to be inappropriate.

I have perused the order whereby the disciplinary proceeding was directed to be initiated. I have also perused the impugned order passed by the Disciplinary Authority. I find substance in submission made on behalf of the petitioner that the petitioner had taken a specific plea in his explanation submitted to the second show cause notice that no record of the Enquiring Authority was supplied to him. The Disciplinary Authority, without adverting to the specific stand taken by the petitioner passed the impugned order of dismissal. The least which was expected of the Disciplinary Authority, in the light of specific stand taken by the petitioner in his second show cause notice, to have examined whether report of the Enquiring Authority was in fact made available to the petitioner or not. The second submission made on behalf of the petitioner that non-appointment of presenting officer vitiates the departmental enquiry is also valid. Apparently, the Enquiring Authority



himself appears to have acted as the prosecutor and submitted his report. Further, there is no denial by the State of Bihar in its counter affidavit that no witness was produced in support of the allegation made in the charge sheet.

Considering the above noted admitted position, in my opinion, the impugned order of punishment dated 12.03.2015 deserves to be set aside. The impugned order of the appellate authority and that passed by the Director General of Police on the petitioner's memorial also require interference and are accordingly set aside. Consequent upon quashing of the impugned order of dismissal, the petitioner shall be required to be reinstated forthwith.

The matter is remanded back to the stage of framing of charge. The Disciplinary Authority shall be at liberty to appoint a presenting officer and direct for holding a fresh departmental enquiry.

Mr. Awadhesh Kumar Mishra, learned counsel for the petitioner has submitted that the petitioner shall have no objection if a fresh enquiry is conducted by a different Enquiring Authority to be appointed by the Disciplinary Authority.

The Court expects that the Enquiring Authority shall



proceed thereafter strictly in accordance with the provisions under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 before submitting the enquiry report. The Disciplinary Authority shall proceed accordingly thereafter.

The petitioner is held to be entitled to all the back wages for the period during which he remained out of service because of the illegal order of dismissal, which has been set aside by the present order. The order directing the respondents to pay back wages is being passed because the Court has noticed that the punishment of dismissal from service is based on no evidence.

Accordingly, this application is allowed with the aforesaid direction and observation.

There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

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