

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16213 of 2016

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Zafarullah Khan Son of Late Aataullah Khan Resident of village - Satojra,
P.S. Panapur, District – Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home Department, Government of Bihar, Patna.
2. The Inspector General Bihar, Patna
3. The Deputy Inspector General, Central Zone, Patna
4. The Superintendent of Police, Nalanda
5. The Conducting officer Cum Dy. S.P. Law and Order , Nalanda
6. The Deputy Superintendent of Police Rajgir Nalanda
7. The Commandant of Police Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Adv. Mr. Arun Kumar Bhagat, Adv.
For the Respondent/s	:	Mr. Md. Nadeem Seraj-GP5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 02-07-2021

Heard learned counsel for the petitioner and learned
counsel for the respondents through video conference.

2. The present writ petition has been filed “*for quashing the order dated 5.5.2016 passed in departmental proceeding no. 130/2014 by Deputy Inspector General Central Zone, Patna communicated vide memo no. 2076 dated 19.5.2016 by the Superintendent of Police, Nalanda by which petitioner has been dismissed from service and salary for suspension period has been withheld; and further for quashing of memo no. 1818 dated 12.7.2016 passed by Inspector General of Police (Appellate*



Authority) by which the departmental Appeal of the petitioner has been dismissed”.

3. The short facts of the case according to the petitioner are that while he was posted as Sub-Inspector of Police, Vigilance in Town Thana, Biharsharif, Vigilance P.S. Case No. 66/2014 dated 23.09.2014 was instituted as he was caught red handed accepting a bribe of Rs. 2,000/- from the complainant Parwez Ahmed. A departmental proceeding was initiated while the petitioner was in judicial custody between 23.9.2014 and 13.1.2015. The petitioner appeared before the Enquiry Officer and requested for supply of the articles of charge, list of proposed witnesses to be examined and other documents. Thereafter, he filed his show-cause on 29.4.2015 but however the departmental proceeding was concluded and an order of punishment was passed by the D.I.G., Central Zone, Patna vide Memo No. 94 dated 5.5.2016 dismissing the petitioner from service. The petitioner then filed a memo of appeal before the Inspector General of Police, Patna Central Zone which was also dismissed.

4. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the petitioner, questions the legality of the order of dismissal and the appellate order on various grounds, chief among them being the violation of natural justice. It is stated



that witnesses were examined behind the petitioner's back during the period he was in judicial custody and no opportunity was granted for cross-examination. He invites attention to paragraph 20 of the supplementary affidavit in which it is stated that as many as 8 grounds were raised before the appellate authority against the order of dismissal. It is submitted however that without applying his mind to these aspects of the matter and to the specific pleas raised, the appellate authority dismissed the appeal.

5. Learned counsel for the State appears and has been heard. It is submitted that the petitioner has an alternative remedy by way of filing a memorial, but instead he has rushed to this Court with the present writ petition.

6. Having heard learned counsel for the parties and on a consideration of the materials on record, this Court finds merit in the submissions of the petitioner. It is not in dispute that the petitioner had raised specific grounds before the appellate authority which are summarized as follows-

“(1) The departmental proceeding was conducted against established norms and in violation of principles of natural justice.

(2) The prosecution witnesses were examined in absence of the petitioner who was in jail at that time.



(3) Copies of deposition of p.w.'s were not supplied to the petitioner which is in violation of Rule (II) (2) of the C.C.A. Rules, 2005.

(4) The departmental proceeding was conducted by Dy.S.P. Nalanda instead of S.P. Nalanda as per clause 12 Appendix-49 of Bihar Police Manual.

(5) Order of punishment has been passed in violation of provisions contained in Rule 828(b) of the Bihar Police Manual, without issuing 2nd show cause notice by the disciplinary authority to the petitioner.

(6) The disciplinary authority has passed the order of punishment since the petitioner failed to disprove the charge leveled against him.

(7) No presenting officer was appointed in the departmental proceeding.

(8) No subsistence allowance was paid to the petitioner during suspension period.”

7. A perusal of the appellate order discloses that the petitioner's contention had not even been adverted to much less dealt with reasons. The appellate authority has merely proceeded on the basis of the recommendation of the Superintendent of Police, the order of dismissal passed by the D.I.G. and his notes. The validity of the departmental proceeding was questioned by the petitioner, *inter alia*, on both factual and legal grounds but these have not been touched upon in the appellate order. It was pointed out that no presenting officer had been appointed and the Enquiry Officer himself acted in dual capacity, which was in the teeth of



several judicial decisions. Non-grant of opportunity to cross-examine the witnesses is another aspect which goes to the root of the matter as raised by the petitioner which was also not dealt with by the appellate authority. Yet again, it was submitted that failure to grant subsistence allowance during the period of suspension was fatal to the validity of the departmental proceeding, which has also been ignored by the appellate authority.

8. Learned counsel for the State has not been able to point out any material in the appellate order to controvert the submissions of the petitioner.

9. In the above circumstances, it is evident that the appellate authority has acted without due application of mind. No finding has been recorded with respect to the grounds raised by the petitioner, much less reasons for not accepting his contentions. The appellate order is no more than an empty formality and a non-speaking one, which amounts to violation of natural justice.

10. The Hon'ble Supreme Court in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.*, (1998) 8 SCC 1, has clearly held that the availability of alternative remedy may not constitute a bar for interference by the Court in its writ jurisdiction.



11. Accordingly, the appellate order contained in Memo No. 1818 dated 12.07.2016 (Annexure-11) is hereby quashed and the matter is remanded to the Inspector General, Bihar, Patna (Respondent No.2) to pass fresh orders on the appeal of the petitioner after grant of opportunity in accordance with law, expeditiously and in any event preferably within a period of three months from the date of receipt/production of a copy of this judgment. Needless to say, the petitioner shall cooperate in the appellate proceeding and not seek unnecessary adjournments.

12. It is made clear that in view of the ongoing Covid-19 pandemic, any correspondence between the parties may be made through e-mail and the petitioner shall be at liberty to request for hearing through video conference. To facilitate disposal, the petitioner shall furnish his mobile number and email ID to the respondent no.2 within a week from today.

13. The writ petition stands allowed *pro tanto*.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.07.2021
Transmission Date	

