

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5548 of 2021

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Ratan Rajak Son of Late Hira Lal Rajak, Resident of Village-Dedaur, P.O.-
Akauna Bazar, P.S.-Nawada (M), District-Nawada (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Additional Director General of Police, (Law and Order) Patna. Bihar.
4. The Dy. Inspector General of Police, Magadh Region, Gaya.
5. The Superintendent of Police-Cum-Disciplinary Authority, Nawada.
6. The Additional Superintendent of Police-Cum-Enquiry Officer, Nawada.
7. The Dy. Superintendent of Police, Nawada (Town), District-Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-04-2022

Heard learned counsel for the respective parties.

In the instant petition, petitioner has prayed for the
following relief/reliefs:

*“That this application is being
preferred for:-*

*(i) Issuance of writ of certiorari for
quashing of dismissal order passed by the
Deputy Inspector General of Police,
Magadh Range, Gaya issued vide memo*



no.3488/र०का० dated 07.08.2019 under signature of Superintendent of Police, Nawada.

(ii) Quashing of order in appeal passed by the Additional Director General of police (Law and Order), Bihar, Patna issued vide letter No. वि.व्य. – (गो)/अपील अभ्यावेदन – 37/2020/76 dated 11.05.2020, whereby and where under orders have been passed on perverse finding of facts.

(iii) For issuance of writ of mandamus directing the Respondent authorities to make payment of all consequential benefit like salary amount and retiral benefits in case of quashing of impugned orders in the facts and circumstances of the case as in normal condition petitioner was to retire from service on 31.10.2019.

Further for grant of any other relief/reliefs for which the petitioner is found entitle in the facts and circumstances of the case.”

Petitioner was subjected to disciplinary proceedings with reference to the P.S. Case No. 828 of 2018 dated 08.11.2018 that the petitioner failed to inform the police station timely in respect of alleged incident took place at 16:00 hours on 08.11.2018. Arising out of the aforesaid alleged allegations, charge memo was issued on 28.01.2019. Petitioner



submitted his reply on 13.02.2019. Copy of the enquiry report was forwarded to the petitioner seeking his explanation on 21.06.2019. The petitioner submitted his representation on 04.07.2019, thereafter, petitioner was dismissed from service on 07.08.2019. Petitioner, feeling aggrieved and dissatisfied with the order of the disciplinary authority, preferred appeal before the I.G.P., Magadh Range, Gaya and it was rejected on 11.05.2020. In the meanwhile petitioner had approached this Court in CWJC No. 22159 of 2019 in which the appellate authority was directed to decide the petitioner's appeal.

Learned counsel for the petitioner submitted that second show-cause notice was issued by the Deputy Superintendent of Police, who is not a competent authority. Further, it is submitted that it is a case of no evidence. The factual aspects are not being apprised by both the disciplinary authority and appellate authority in not timely informing the police station in respect of alleged allegations which took place on 08.11.2018. On 22.02.2022, the following order was passed:

“One of the alleged irregularities stated to have been committed by the Deputy Superintendent of Police in issuance of second show cause notice to the petitioner



*arising out of disciplinary proceedings.
Prime facie, he is not the competent authority for the reasons that appointing and disciplinary authority in so far as petitioner is concerned is the Superintendent of Police. In this regard, State counsel is hereby directed to seek instruction.*

Re-list the matter on 02.03.2022.”

The Deputy Superintendent of Police, Anil Kumar, has filed a counter affidavit on behalf of the Superintendent of Police, Nawada. In paragraph no.5, it is stated as under:

“5. That, at outset, so far as the issuance of second show cause notice to the petitioner by the Deputy Superintendent of Police in the said disciplinary proceeding, is concerned, it is being most humbly stated and submitted that after submission of the enquiry report before the Superintendent of Police, Nawada in the departmental proceeding against the petitioner, vide Noting dated 19.06.2019, the then Superintendent of Police, Nawada has directed his office as follow:-

-Perused the file.

-Charges levelled against the delinquent are serious and proved during enquiry.



-file forwarded to DIG, Magadh with recommendation to dismiss the delinquent from service.

-provide a copy of Charge, findings of enquiry officer to delinquent on government cost with direction to submit his defence against dismissal from service to DIG, Magadh Range.”

It is further submitted that the disciplinary authority has not applied its mind before issuance of show-cause notice alongwith the Enquiring Officer's report through the Deputy Superintendent of Police as is evident from the notings dated 19.06.2019.

Per contra, learned counsel for the respondent-State resisted the petitioner's contention and submitted that having regard to the serious allegations levelled against the petitioner read with the fact that the charges levelled against the petitioner was proved in the departmental enquiry, no interference is called for. It is further submitted that the Deputy Superintendent of Police had acted only in communicating second show-cause notice, on the instruction of the Superintendent of Police-Disciplinary Authority. Therefore, there is no infirmity in the proceedings.

Heard learned counsel for the respective parties.



Undisputed facts are that the petitioner was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal from service and it was confirmed by the appellate authority. The petitioner's contention that second show-cause notice is not served by competent authority, i.e., disciplinary authority, is required to be examined in terms of Sub Rule (3) of Rule 18 in some other case, for the reasons that the disciplinary authority-Superintendent of Police while making a noting dated 19.06.2019, it is recorded as under:

“-Perused the file.

-Charges levelled against the delinquent are serious and proved during enquiry.

-file forwarded to DIG, Magadh with recommendation to dismiss the delinquent from service.

-provide a copy of Charge, findings of enquiry officer to delinquent on government cost with direction to submit his defence against dismissal from service to DIG, Magadh Range.”

Perusal of the aforesaid noting of the disciplinary authority-Superintendent of Police, Nawada, it is crystal clear that there is total non-application of mind. He being the disciplinary authority, he has abdicated his responsibility in taking a decision. On the other hand, he has forwarded the file



to the D.I.G., Magadh Range, with a recommendation to dismiss the delinquent from service before issuance of second show-cause notice. That apart proposal for furnishing copy of the charge, findings of the Enquiring Officer's report to the petitioner while seeking submission of his defence against a dismissal from service to D.I.G., Magadh Range, Gaya, even before issuance of show-cause notice alongwith Enquiring Officer's report read with explanation to the Enquiring Officer's report to be submitted by the petitioner. The disciplinary authority-Superintendent of Police has already determined to impose the major penalty of dismissal from service.

In the light of these facts and circumstances, there is total non-application of mind by the disciplinary and appellate authority and also not examined the entire file before deciding the petitioner's appeal. In the light of these facts and circumstances, the petitioner has made out a *prima facie* case. Hence, Annexure-1 series is set aside.

Accordingly, the present petition stands allowed.

The disciplinary authority is hereby directed to commence enquiry proceedings from the defective stage i.e., from the date of issuance of second show-cause notice and proceed in accordance with law within a period of three months



from the date of receipt of this order. The intervening period from the date of dismissal till passing of the final order, the disciplinary authority is hereby directed take note of Apex Court decision in the case of ***Managing Director, ECIL vs. B. Karunakaran reported in (1993) 4 SCC 727 and Chairman-cum-Managing Director Coal India Ltd. vs. Ananta Saha and Ors. reported in (2011) 5 SCC 142.*** Paragraph nos. 46 to 50 reads as under:-

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately, i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service



rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam v. Presiding Officer, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.

48. In ECIL v. B. Karunakar, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary



authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh , Akola Taluka Education Society v. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale.

50. In view of the above, the relief sought by the delinquent that the appellants



be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

The disciplinary authority shall take necessary action, in respect of reinstatement or to place the petitioner under suspension, within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Rajeev Ranjan Prasad, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.05.2022
Transmission Date	NA

