

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15166 of 2013

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Pankaj Kumar Paswan Son Of Rajbir Paswan Resident Of Village- Malhipur,
P.O. Saligrami, Police Station- Sahebpur Kamal, District- Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, The Department Of Home Affairs, Bihar, Patna
3. The D.G.P., Bihar, Patna
4. The D.I.G., Purnea Range, Purnea
5. The S.P. Purnea
6. The S.P. Katihar
7. The Surgeant Major-Cum-Conducting Officer, Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Advocate
	:	Mr. Binay Kumar, Advocate
For the Respondent/s	:	Mr. Tej Bahadur Singh

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 12-05-2022

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

“That this is an application for invoking the writ jurisdiction of this Hon’ble Court for grant of the following reliefs:

(i) For issuance of a writ of certiorari or nay other appropriate writ order or direction for quashing the order dated 30.04.2013 contained in memo no. 1951 / L-1 in Purnea District Departmental Proceeding No. 45/2011 passed by the respondent no. 3 the D.G.P. Bihar, Patna by



which he has most arbitrarily and quite erroneously dismissed his revision/representation against the order of dismissal passed by the disciplinary as well as appellate authority without considering the merit of the case.

(ii) For issuance of a writ of certiorari or any other appropriate writ order or direction for quashing the order dated 18.07.2012 contained in memo no. 821 passed by the respondent no.4, The D.I.G. Purnea by which he has most arbitrarily and quite erroneously dismissed the petitioners appeal against this dismissal from the post of police constable without considering the merit of the case.

(iii) For issuance of a writ of certiorari or another appropriate writ, order or direction for quashing the order dated 07.03.2012 contained in memo no. 688 passed by the respondent no.5. The S.P. Purnea by which he has most arbitrarily and quite erroneously dismissed the petitioner from the post of police constable by placing a great reliance upon the highly collusive and biased report of the Conducting Officer.

(iv) For issuance of a writ of mandamus or any other appropriate writ, order or direction commanding the respondent authorities to reinstate the



petitioner in service with entire consequential benefit as if he was not dismissed from service.

(v) For issuance of a writ of mandamus or any other appropriate writ, order or direction commanding the respondent authorities to stayed the matter directing the court of this writ application.

(vi) For issuance of a writ, order or directions commanding the respondents for grant of any other relief or reliefs to which the petitioner may be deemed entitled by this Hon'ble Court."

The petitioner was subjected to disciplinary proceedings on the allegation that petitioner had physical quarrel with one Mr. Ajay Singh on the alleged allegation that petitioner had borrowed friendly loan of Rs.2,000/- (Rupees Two Thousand) from him and it was not returned by the petitioner. On this issue, official respondent initiated parallel proceedings like disciplinary/criminal proceedings. In the criminal proceedings, petitioner has been acquitted on 24.02.2020 whereas in the disciplinary proceedings, he was punished with major penalty of dismissal from service on 06.04.2012. Thereafter, the petitioner has exhausted the remedy of appeal and revision which were against the petitioner. Thus,



the petitioner has presented this petition.

Official respondent proceeded to frame article of charges on 25.11.2011. On 10.02.2012 and 27.02.2012 the inquiring officer held proceedings in respect of alleged charges. The petitioner remained absent in the inquiry, thus, it is an ex parte enquiry. On receipt of the inquiring officer's report, the disciplinary authority issued a show-cause notice on 07.03.2012 along with the inquiring officer's report. The petitioner has submitted his explanation. On receipt of such explanation, disciplinary authority proceeded to impose penalty of dismissal from service on 06.04.2012. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred appeal and he had suffered an order on 18.07.2012, still aggrieved by the order of appellate authority, petitioner preferred a revision petition and it was also rejected on 20.04.2013.

Learned counsel for the petitioner submitted that proceedings are ex parte. He has also submitted that presenting officer was not present before the inquiring officer at the time of inquiry held on 10.02.2012 and 27.02.2012. Thus, the inquiry proceedings are contrary to relevant provisions of the disciplinary proceedings. It is also submitted that the object of appointing presenting officer is to present the case on behalf of



the department. However, the presenting officer was not present as it was not disputed by learned counsel for the State.

Per contra, learned counsel for the respondent-State, on instruction, submitted that the petitioner had appeared on 10.02.2012 and 27.02.2012 in the inquiry, therefore, it is not an ex parte enquiry. Having regard to the alleged allegations relating to quarrel with one Mr. Ajay Singh, colleague of the petitioner, is a serious charge for the reasons that petitioner is in the Police Department, he should be model to the general public. Therefore, there is no infirmity in imposition of penalty of dismissal from service. His acquittal is subsequent to the order of dismissal, appellate authority and revisional authority's orders. Even if the petitioner is acquitted in criminal case on 24.02.2020, the same cannot be taken into consideration for the purpose of imposition of penalty under the disciplinary rules for the reasons that criminal case is relating to offences committed by the person whereas disciplinary proceedings are initiated for the misconduct.

Heard learned counsel for the respective parties.

Undisputed facts are that the petitioner was subjected to parallel proceedings. Disciplinary proceedings was concluded in imposition of penalty of dismissal from service on



06.04.2012 and it was affirmed by both appellate and revisional authority on 18.07.2012 and 30.04.2013 respectively. Perusal of the records it is evident that it was an ex parte enquiry so also presenting officer has not presented the departmental case before the inquiring authority. In other words, inquiring officer has acted as an inquiring officer as well as presenting officer while holding the charges levelled against the petitioner are proved. Thus, the inquiring authority has violated the provisions of disciplinary rules. Further, it is to be noted that if the petitioner has appeared in the inquiry proceedings, in that event, in the day to day proceedings, it was bounden duty of the inquiring authority to record the presence of the aggrieved person/petitioner and his signature which is required to be obtained after conclusion of the day to day proceedings. In other words, assuming that the petitioner has appeared on the aforesaid dates before the inquiring authority, the inquiring authority has not taken the signature of the petitioner. Therefore, one has to draw inference that petitioner has remained an ex parte in the inquiry. The other contentions raised by learned counsel for the State cannot be appreciated for the reasons that there is a serious lacuna in the inquiry itself, mainly, presenting officer has not presented the case on behalf of the department in



respect of alleged charge and he has also not proved the alleged charge before the inquiring authority by adducing both oral and documentary evidence. On this issue, the petitioner has made out a *prima facie* case so as to interfere with the order of dismissal, appellate authority and revisional authority's orders dated 06.04.2012, 18.07.2012 and 30.04.2013 respectively. Accordingly, order dated 06.04.2012, 18.07.2012 and 30.04.2013 stands set aside.

The concerned official respondents are hereby directed to reinstate the petitioner within a period of one month from the date of receipt of this order. Petitioner is entitled to all service benefits including monetary benefits, the same shall be calculated and disbursed in favour of petitioner within a period of two months from the date of receipt of this order.

With the above observation, the present petition stands allowed.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2022
Transmission Date	NA

