

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4817 of 2021

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Sudarshan Prasad Yadav Son of Late Ram Murat Prasad Yadav Resident of
Village- Amwa Nackhhed, P.S.- Gopalganj, District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar
 2. The Director General of Police, Bihar Patna
 3. The Inspector General of Police, Magadha Range, Gaya Gaya
 4. The Deputy Inspector General of Police, Magadha Division, Gaya Gaya
 5. The Senior Superintendent of Police, Gaya Gaya
 6. The Superintendent of Police, Town, Gaya Gaya
 7. The Deputy Superintendent of Police Cum Enquiring Officer, Gaya Gaya
- Respondents

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Appearance :

For the Petitioner : Mr.Akhilesh Dutta Verma, Advocate
For the Respondents : Mr.Saroj Kumar Sharma, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

8 09-02-2023 Heard learned counsel for the petitioner and the State.

This writ petition has been filed for quashing order dated 9.12.2018 (Annexure 10) passed by the Senior Superintendent of Police, Gaya by which the petitioner has been dismissed from service as well as appellate order dated 8.8.2019 (Annexure 12) passed by the Deputy Inspector General, Magadh Division, Gaya by which dismissal order dated 9.12.2018 has been affirmed. Petitioner has also challenged order dated 3.12.2020 (Annexure 14) passed by the DGP, Bihar by which he has affirmed order of termination dated 9.12.2018 and the appellate order dated 8.8.2019.



Short facts giving rise to the instant writ petition are that the petitioner, while posted as constable at Gaya, was apprehended taking bribe leading to registration of Vigilance Case No.86 of 2015 and initiation of departmental proceeding culminating in the dismissal of his service. Appeal as well as memorial too were dismissed.

Assailing the impugned orders, learned counsel appearing for the petitioner submits that these orders suffer from various procedural lapses. He submits that in the instant case, no Presenting Officer has been appointed in the departmental proceedings and it was the Enquiry Officer who played role of the Presenting Officer as well as the Enquiry Officer himself recorded findings of guilt against the petitioner. Learned counsel submits that it is mandatory on the part of the Disciplinary Authority to appoint the Presenting Officer in terms of Rule 17(5)(c) of the CCA Rules, 2005 and failure on the part of the Department in appointing Presenting Officer is vital and on this ground alone entire departmental proceeding stands vitiated. Learned counsel refers to a Bench decision of this Court reported in **2004(4) PLJR 517 (Rajib Lochan Jha Vs. State of Bihar)**. He places reliance on the judgment of this Court to argue that this single infirmity is enough to hold the



entire proceeding vitiated.

On the other hand, learned counsel for the State is unable to dispute this argument which is also confirmed from the records itself.

Law is well settled in this regard to the effect that the Enquiry Officer representing the Disciplinary Authority could not have assumed the role of a Presenting Officer who represents Department and thus is an interested party. In this connection, reliance is placed on the judgment of the Hon'ble Apex court reported in **(2010)2 SCC 722 (State of Uttar Pradesh Vs. Saroj Kumar Sinha)**. Paragraph 28 of the said judgment reads as follows:-

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

Reference is also made to another judgment of this



Court reported in **1996(1) PLJR 401 (Panchanan Kumar Vs. Bihar State Electricity Board)** in which even when the Presenting Officer was appointed for the proceedings, he failed to appear and which role was assumed by the Enquiry Officer himself. A Bench of this Court taking note of the circumstances, made the following observations:-

"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice."

Considering the rival submissions of the parties and on perusal of the materials available on the record there is no dispute that in the case in hand no Presenting Officer was appointed either to lead or to prove evidence and it was it was



the Enquiry Officer who played role of the Presenting Officer as well as the Enquiry Officer himself recorded findings of guilt against the petitioner.

In view of the above discussions, the punishment order, the appellate order and the memorial are set aside and quashed with all consequential benefits to the petitioner.

Needless to state that the respondents are at liberty to proceed afresh against the petitioner in accordance with law, if so advised.

Writ petition stands allowed.

(Prabhat Kumar Singh, J)

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