

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20399 of 2016

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Lalan Kumar son of Shyam Sunder Yadav resident of Village Sukhasan PS-
Kumarkhand, Destt- Madhepura

... .. Petitioner/s

Versus

1. The State Of Bihar through the Home Secretary, Department of Home (Special) Govt. of Bihar, Patna
2. The Director General of Police, Bihar
3. The Inspector General of Police, Bhagalpur Zone, Bhagalpur
4. The Deputy Inspector General of Police , Munger Zone , Munger
5. The Superintendent of Police, Begusarai
6. The Sub Divisional Police officer, Teghra, Distt- Begusarai
7. The Inspector of Police , Barauni Anchal, District- Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, advocate Mr. Navjot Yesu, advocate
For the Respondent/s	:	Mr. Dhurendra Kuamr, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

Date : 09-02-2023

Heard learned counsel for the parties.

Petitioner has filed this writ petition for following
reliefs:-

i) For quashing the order contained in memo No. 612 dated 07.03.2014 issued by resp. No.4 whereby and whereunder the petitioner has been dismissed from his service in contemplation of departmental proceeding.



ii) *For quashing the order contained in memo No. 2435 dated 21.01.2014 issued by resp. No.3 whereby and whereunder the statutory appeal preferred by the petitioner against the order of dismissal has also not been considered and the appellate authority did not interfere in the order of dismissal passed by respondent No.4.*

iii) *For quashing the order contained in memo No. 108 dated 08.01.2016 whereby and whereunder appeal memorial filed by the petitioner has been declared not valid as not maintainable.*

iv) *For giving a direction to consider the appeal memorial application dated 25.02.2016 pending before respondent No.1 within a reasonable time.*

v) *Any other relief/ reliefs which this Hon'ble court may deem fit and proper.*

The brief facts for adjudication of this writ petition is that while the petitioner was posted as O/C, F.C.I., Barauni he was subjected to a departmental proceeding vide departmental proceeding No. 41/ 2013 and articles of charges have been handed over to him vide Memo No. 4201 dated 13.07.2013 (Annexure-5 to the writ petition). After submission of enquiry report second show cause was issued to the petitioner and after considering the reply the departmental proceeding resulted into order of



punishment, i.e., dismissal from service vide memo No. 612 dated 07.03.2014 (Annexure-14 to the writ petition). Thereafter, the petitioner preferred appeal against the order of dismissal which was dismissed vide memo No. 2435 dated 21.10.2014 (Annexure-15A to the writ petition). The memorial preferred by the petitioner also came to be dismissed as not maintainable vide memo No. 108 dated 08.01.2016 (Annexure-16 to the writ petition).

Mr. Rajeev Kumar Singh, learned counsel for the petitioner submits that the order of punishment suffers from multiple infirmities. One of the grounds taken by the petitioner is that in the present case no Presenting Officer was appointed in the departmental proceeding to lead the evidence and on this ground alone the entire departmental proceeding is vitiated. He submits that Rule 17(6) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 mandates appointment of Presenting Officer but in the present case for the reasons best known to the authorities no Presenting Officer was appointed, which is evident from the impugned order contained in memo No. 612 dated 07.03.2014 (Annexure-14 to the writ petition). In support of his submission learned counsel for the petitioner relied upon a judgement of this court in the case of **Panchanan Kumar**



vs. **Bihar State Electricity Board & Ors** reported in 1996 (1)

PLJR 401, paragraph 11 of the aforesaid judgement reads thus:-

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..."

Learned counsel for the petitioner further submits that another infirmity in the present case is that in spite of repeated demands the documents relied upon by the Disciplinary Authority were not supplied to the petitioner. In support of his submission learned counsel refers to Annexure-6 of the writ petition.

On the other hand learned counsel for the respondents submits that the finding recorded by the enquiry officer is based on



concrete evidences adduced during the departmental proceeding. The petitioner was given multiple and adequate chances to place his ground before the conducting officer as well as other authorities. The copy of charges leveled against him was made available to him vide memo No. 4201 dated 13.07.2013 and petitioner was given adequate chance to cross examine the witnesses during the departmental proceeding, which is evident from the materials available on record, and after following the rules and principles of departmental proceeding the order of punishment has been passed and as such this writ petition is devoid of any merit and is fit to be dismissed. However, in the entire counter affidavit no word has been whispered about appointment of Presenting Officer.

Considering the rival submission of parties and on perusal of materials available on record and the ratio laid down by this court in the case of *Panchanan Kumar* (supra), this court finds and holds that in the absence of Presenting Officer the entire departmental proceeding is vitiated in law. Accordingly, the order of punishment contained in memo No. 612 dated 07.03.2014 (Annexure-14 to the writ petition), the appellate order and the order on memorial (Annexure-15A and 16 of the writ petition) are



hereby set aside and quashed with all consequential benefits to the petitioner.

Needless to say that if the respondents so desire they may initiate a fresh proceeding against the petitioner, in accordance with law.

This writ petition stands allowed.

(Prabhat Kumar Singh, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N. A
Uploading Date	10 th February, 2023
Transmission Date	N. A

