

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7961 of 2023

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Bipin Bihari S/o Ram Pravesh Sharma, Resident of Village- Lat, P.O. -
Hulashganj, P.S.- Hulashganj, District - Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Home Affairs Department at Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Shahabad Zone at Dehri-on-Sone, District - Rohtas.
4. The Superintendent of Police, Rohtas.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Arun Kumar Gupta, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad (Sc8)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 05-12-2023

The present writ petition has been filed for quashing the order of punishment dt. 31.3.2022/ 4.4.2022, passed by the Superintendent of Police, Rohtas, whereby and whereunder the petitioner has been inflicted with the punishment of forfeiture of one annual increment with cumulative effect, which is equivalent to two black marks. The petitioner has further prayed for quashing of the appellate order dated 13.10.2022, passed by the Deputy Inspector General of Police, Shahabad



Area, Dehri-on-Sone, as also the order dated 06.12.2022, passed by the Director General of Police, Bihar Patna whereby and whereunder the memorial filed by the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that the petitioner was posted at the relevant time at Sasaram (Muffasil) Police Station as Sub-Inspector of Police when Charge-sheet dated 15.03.2021 was served upon the petitioner by the Superintendent of Police, Rohtas *inter alia* alleging therein that while the petitioner was posted as Sub-Inspector of Police at Sasaram (Mufassil) Police Station, the petitioner had not taken any action to verify the name and address of the owner of one Yamaha Motorcycle seized in connection with Sasaram (Mufassil) P.S. Case No.226 of 2020 dated 19.07.2020, under Section 30(a) of the Bihar Excise and Prohibition Act, 2018 although the accused of the said case is a local resident of the area in question as also he had not gone outside the State of Bihar, in connection with one another case, to verify the name and owner of



the seized truck although his name and address was available with him, which depicts gross negligence & dereliction in carrying out his duties.

3. Thereafter, the departmental enquiry was conducted by the Enquiry Officer, whereupon the Enquiry Officer had submitted an enquiry report dated 14.07.2021 in connection with Rohtas District Departmental Proceeding No.12/2021, finding the petitioner to be not guilty of the charges levelled against him. Nonetheless, the Disciplinary Authority, i.e. the Superintendent of Police, Rohtas had issued a second show-cause notice dt. 30.10.2021/1.11.2021 to the petitioner, however, no reason whatsoever, for differing with the findings of the Enquiry Officer, was mentioned therein. The petitioner had then filed reply to the aforesaid second show-cause notice, whereafter the Superintendent of Police, Rohtas, by the impugned order dated 31.03.2022/04.04.2022 had inflicted the punishment of forfeiture of one annual increment with cumulative effect, equivalent to two black marks.



4. The petitioner had then filed an appeal, however the same had also stood dismissed, by an order dated 13.10.2022, passed by the Deputy Inspector General of Police, Shahabad Area, Dehri-on-Sone. The petitioner had then filed a memorial, before the Director General of Police, Bihar, Patna, however the same has also stood dismissed by the impugned order dated 06.12.2022 on the ground that the same is not maintainable, inasmuch as memorial can be filed only against the punishment of dismissal from service or removal from service.

5. The short point raised by the learned counsel for the petitioner for consideration is that though the Enquiry Officer, in his enquiry report dated 14.07.2021 has exonerated the petitioner, however, the Disciplinary Authority has differed with the findings of the Enquiry Officer and inflicted punishment vide order dated 31.03.2022/ 04.04.2022, without either granting the petitioner an opportunity of being heard or putting forth his defence with regard to the reasons for such disagreement, inasmuch as the second show-cause



notice dt. 30.10.2021/ 1.11.2021, issued by the Superintendent of Police, Rohtas does not mention any reason for differing with the findings of the Enquiry Officer, thus, it is submitted that the principles of natural justice have been violated.

6. Per Contra, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit, filed in the present case that the Superintendent of Police, Rohtas had issued a memo of charge qua the petitioner herein on the allegation that the petitioner had engaged in gross negligence in conducting the investigation of a case bearing Sasaram (Mufassil) P.S. Case No.226 of 2020 and had committed dereliction in discharge of his duties, inasmuch as he had not ascertained the name and address of the owner of the vehicles in question, which had been seized by the police. Thereafter, though a departmental proceeding was conducted against the petitioner, however, the Enquiry Officer had submitted an enquiry report, exonerating the petitioner without considering the relevant facts, hence, a second



show-cause notice was issued to the petitioner on 30.10.2021/01.11.2021, whereafter, the impugned order of punishment dated 31.03.2022/04.04.2022 has been passed, hence it is submitted that there is no infirmity in the procedure followed by the disciplinary authority, thus there is no merit in the present writ petition.

7. At this juncture, upon a query being put to the Ld. counsel appearing for the respondent as to whether any show-cause notice has been issued to the petitioner, mentioning therein the reasons for disagreement with the findings of the Enquiry Officer and asking his response to the same, in order to grant him an opportunity to put forth his defence regarding the same, the Ld. counsel for the respondent is unable to show from the records that any such second show-cause notice was issued to the petitioner.

8. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the Enquiry Officer had submitted his enquiry report dated 14.07.2021,



exonerating the petitioner from the charges levelled against him, however the disciplinary authority, without issuing any show-cause notice to the petitioner, recording therein tentative reasons for disagreeing with the opinion of the enquiry officer, has straightway proceeded to pass the impugned order of punishment dt. 31.3.2022/ 04.04.2022, which is in utter violation of the principles of natural justice. This aspect of the matter has been conclusively decided by a Three-Judge Bench of the Hon'ble Apex Court in the case of **Punjab National Bank and others vs. Kunj Behari Misra**, reported in **(1998) 7 SCC 84**, paragraphs nos. 17, 19 and 21, whereof are reproduced herein below:-

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612] quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an



adverse finding, as per Karunakar case [(1993) 4 SCC 727] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer



must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision & can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary



authority records its findings on the charges framed against the officer.

21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as costs."

9. Considering the aforesaid aspect of the matter, this Court finds that the disciplinary authority has committed a grave error by not recording its tentative reasons for disagreement with the findings of the Enquiry Officer and by not granting an opportunity to the petitioner to put forth his defense to the same for the purposes of



persuading the disciplinary authority to accept the favorable conclusion of the Enquiry Officer and has instead, straight away proceeded to pass the order of punishment dated 31.03.2022/04.04.2022, which has not only resulted in violation of the principles of natural justice but is also in teeth of the law laid down by the Hon'ble Apex Court in the case of ***Kunj Behari Misra (supra)***, hence the order of punishment dated 31.03.2022/04.04.2022 stands vitiated in the eyes of law.

10. Having regard to the facts and circumstances of the cases and for the reasons mentioned hereinabove, this Court finds that the order of punishment dt. 31.03.2022/ 4.4.2022, passed by the Superintendent of Police, Rohtas is not sustainable in the eyes of law, hence is quashed. Consequently, the appellate order dated 13.10.2022, passed by the Deputy Inspector General of Police, Shahabad Area, Dehri-on-Sone, as also the order dated 06.12.2022, passed by the Director General of Police, Bihar Patna on the memorial filed by the petitioner, have got no legs



to stand, hence are also set aside.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.12.2023
Transmission Date	NA

