

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11568 of 2013

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Birwal Singh Son Of Late Ram Naresh Singh, Resident Of Village- Karara,
P.S.- Muffasil Dhobha O.P, District- Bhojpur, Ara

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors Null Null
2. The Director General Of Police, Bihar, Patna. The Authorized
3. The Inspector General Of Police, Darbhanga Zone, Darbhanga
4. The Deputy Inspector General Of Police, Darbhanga Range, Darbhanga
5. The Superintendent Of Police, Samastipur.
6. The Sr. Superintendent Of Police, Patna
7. The Conducting Officer -Cum- Sub-Divisional Police Officer, Patori
8. The Conducting Officer -Cum- Sub-Divisional Police Officer, Sadar, Samastipur
9. The Conducting Officer- Cum- Deputy Superintendent Of Police, Headquarter, Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Ranjan, Adv.
For the Respondent/s : Mr. Ajay, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 10-02-2023

1. The petitioner by way of this writ petition has challenged the order dated 28th February 2011, whereby the appeal preferred by the petitioner against the order dated 24th June 2008 was rejected. He has also challenged the order dated 24.06.2008, passed by the Deputy Inspector General of Police, Darbhanga Range,



whereby the order dated 14.09.2006 passed by Superintendent of Police, Samastipur dismissing the petitioner from service was converted to punishment of reversion from the post of Havildar to the post of Constable equivalent to three black marks and forfeiting the salary for the intervening period during which he has remained out of service.

2. In order to appreciate the controversy, the facts of the case need to be noticed :

On 31st August 2001, the petitioner was served with a charge sheet wherein allegations were leveled against the petitioner of indiscipline and misbehavior and being reckless and careless in performing duty which is in reference to an allegation of an incident which occurred on 24.08.2001. It was alleged that the petitioner went to the residence of the Deputy Superintendent of Police and hurled abuses and threats in front of several other Constables and witnesses. On the basis of the charge sheet, an enquiry was conducted by a Deputy Superintendent of Police who held the petitioner guilty of the charges and submitted his report to the Superintendent of Police who passed an order on 14th September 2006 of



removal from service.

3. The petitioner had submitted a representation with reference to departmental proceedings and pointed out that he was not given any opportunity before the departmental enquiry nor he was informed about the date on which the departmental enquiry was being conducted. It was pointed out that he has been working for several months at Samastipur District since 2003 but was not informed of the departmental enquiry. He also prayed that the enquiry be conducted by different enquiry officer and he may be given an opportunity to defend himself.

4. The removal order passed by the Superintendent of Police was examined by the D.I.G. at his own level and on the appeal preferred by the petitioner vide order dated 03.01.2007, he remanded it to the Superintendent of Police for conducting a fresh enquiry after providing a copy of the enquiry report to the petitioner and after following the provisions of law relating to conducting of departmental enquiry. The order of removal was however not set aside by the D.I.G.

5. The Circle Officer, Sadar was appointed to conduct the enquiry who examined the witnesses, submitted his enquiry report, and found that none of the witnesses supported the allegations and exonerated the petitioner. The enquiry report



was considered by the S.P. Samastipur who agreed with the report and sent the same to the D.I.G Police, Darbhanga vide his order dated 31st July 2007.

6. D.I.G., however, rejected the enquiry report as well as the order of the S.P. and again directed the S.P. Samastipur to conduct a *de novo* enquiry vide his order dated 31st August 2007. At the same time, the concerned witnesses who had not supported the charges were also put to notice and departmental enquiry was initiated against them. One of the witnesses was directed to be removed from service by him.

7. The new enquiry officer, held enquiry at Ranchi. A copy of the statement made by the enforcement officer was taken on record by the enquiry officer and sent to the petitioner on 08.01.2008 mentioning that the enquiry was completed and he may give his defense within ten days. The petitioner submitted his reply on 17.01.2008 and the enquiry officer submitted his report on 17.02.2008 without giving his opinion.

8. The D.G. after examining the enquiry report held the petitioner guilty of misbehaving with the Dy.S.P. but also observed that the allegations levelled by the Dy.S.P. appeared to be based on prejudice and bias and with over-implication. It was noted that the petitioner had made a representation against his



transfer to a far-off Police Station. At the same time, he had reported at his new place of posting. In view thereof, the D.I.G. set aside the order of removal from service and directed to revert him for two years on the lower post of Constable which would amount to three black ink entries in the service record. He was directed to be reinstated and the period of removal was to be treated as extraordinary leave for which nothing was to be paid for the period for which no remuneration was to be paid.

9. The petitioner preferred writ petition bearing **C.W.J.C. No. 7761/2009** before this Court which was disposed of with liberty to avail remedy of memorial. The memorial preferred by the petitioner was rejected by the D.G. vide order dated 28th February 2011, whereafter the present writ petition was filed.

10. Learned counsel for the petitioner submits that the order passed by the D.G. was erroneous and based on an enquiry report which was conducted in contravention of the provisions contained under **Rule 17 of the C.C.A. Rules 2005**. The petitioner had been exonerated earlier in the enquiry and there was no reason to conduct a fresh enquiry. The petitioner was not given any notice before initiating a fresh enquiry. The enquiry officer had not given any finding of guilt against the petitioner and if the D.I.G. did not agree with the enquiry officer, he



should have given an opportunity to the petitioner before holding him guilty. Once the D.I.G. himself has found the report made by Dy.S.P. to be prejudiced and biased, the same could not have been relied upon to hold that the petitioner had committed any misconduct or misbehavior with the Dy.S.P. The observations of D.I.G. while punishing the petitioner are therefore self-contradictory.

11. Learned counsel appearing for the State has supported the orders and submitted that the D.I.G. has fairly considered all the aspects and passed a just and fair order. The D.G. has also taken into consideration the fact that discipline is required to be maintained in the Police services and a subordinate Head Constable ought not misbehave with a senior officer of the rank of Dy.S.P. The punishment awarded earlier has been reduced sufficiently and this Court while sitting in writ jurisdiction ought not interfere with the order.

12. I have considered the submission. It is noticed that the order of removal was based on wrongful proceedings which was set aside by the D.I.G. vide his order dated 03.01.2007. The second enquiry report was agreed to by the S.P. who did not find the charges to be proved. The D.I.G. did not agree with the findings but did not give any opportunity of hearing to the



petitioner, nor he gave disagreement notice to the delinquent as required in law. In terms of the Judgment passed by the Apex Court in **Punjab National Bank & Ors. Vs. Kunj Behari Misra** as reported in **1998 (7) SCC 84** which is held as under:-

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612 : (1964) 2 SCR 1 : (1963) 1 LLJ 295] 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 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] 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.”

In S.P. Malhotra Vs. Punjab National Bank & Ors. 2013 (7)

SCC 251 which is held as under:-

“7. The appellant challenged the said orders of punishment by filing Writ Petition No. 1201 of 1988 before the High Court of Punjab and Haryana at Chandigarh. The said writ petition was contested by the respondent Bank. The learned Single Judge allowed the said writ petition vide judgment and order dated 20-5-2011 [S.P. Malhotra v. Punjab National Bank, Civil Writ Petition No. 1201 of 1988, decided on 20-5-2011 (P&H)] , holding that in case the disciplinary authority disagrees with the findings recorded by the enquiry officer, he must record reasons for the disagreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be passed. In the instant case, as such a



course had not been resorted to, the punishment order stood vitiated.

17. In Canara Bank v. Debasis Das [(2003) 4 SCC 557 : 2003 SCC (L&S) 507 : AIR 2003 SC 2041] this Court explained the ratio of the judgment in Kunj Behari Misra [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] , observing that it was a case where the disciplinary authority differed from the view of the inquiry officer.

“26. ... In that context it was held that denial of opportunity of hearing was per se violative of the principles of natural justice.” (Debasis Das case [(2003) 4 SCC 557 : 2003 SCC (L&S) 507 : AIR 2003 SC 2041] , SCC p. 578, para 26)

18. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] .”

However, in **Anant R. Kulkarni Vs. Y.P. Education Society & Ors. 2013 (6) SCC 515**, the Apex Court has cautioned and observed as under:-

“The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the



charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion.”

13. Having noticed above, further proceedings conducted by the respondent are found to be irregular but this Court finds that the D.I.G. has not accepted the version of the complainant Dy.S.P. as it is while holding that the petitioner has committed as misconduct by entering into an altercation with his superior officer. The possibility of over implication and prejudice and bias of the superior officer has also been examined. It is a balanced order and this Court would not Act as an appellant body. The petitioner has been given a fair opportunity of hearing and even the D.G. has given him a hearing by way of memorial. This Court would therefore refrain from interfering with the order of punishment and more so as discipline is required to be maintained in the Police forces. The reversion was for a period of two years which means that after two years the petitioner would retain back on his original post and will also draw regular



salary. The period from removal till the date of reinstatement has to be counted for all purposes including fixation of salary from time to time. However, the same has rightly been treated to be notional by the disciplinary authority and it does not warrant any interference.

14. Accordingly, the writ petition fails and is dismissed. No cost.

(Sanjeev Prakash Sharma, J)

sachin/-

AFR/NAFR	
CAV DATE	03.01.2023
Uploading Date	
Transmission Date	

