

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16487 of 2013

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Bajrang Kumar Sah Son Of Late Saryug Prasad Sah Presently Residing At
New Police Line, P.S. Nawada, Police Station, District- Bhojpur, Ara

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Deputy Inspector General, Purnea Zone, Purnea
3. The Superintendent Of Police, Purnea
4. The Police Inspector, Banmankhi, Purnea Cum Conducting Officer,
Banmankhi, Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Birendra Kant Chaudhary, Adv.
For the Respondent/s	:	None

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 10-01-2023 No one appeared for the respondent. It is a case
pending for 10 years.

The petitioner by way of this writ petition prays to
quash the punishment order dated 23.08.2011 as well as the
order whereby appeal was rejected dated 27.01.2012. A charge
was levelled against the petitioner of showing of having
misbehaved with general public and also high handedness and
of having cheated lady due to which there was great uproar in
the society. The petitioner denied the charges.

Learned counsel submits that the action was taken by
him in terms of the direction issued by the Circle Officer who
directed to use force if there is encroachment. The charge were



held to be not proved against the petitioner by the enquiring officer but the disciplinary authority has disagreed with the report of the concerned In-Charge and has proceeded to impose the penalty of one black spot vide order dated 23.08.2011. The same has been approved by the appellate authority.

This Court finds that after the differing with the findings of the enquiry officer and before passing of punishment order the disciplinary proceedings authority was required to give a notice to the delinquent giving out reasons for disagreement and before passing of punishment order an opportunity of hearing was required to be given to the concerned petitioner.

The Supreme Court in **Punjab National Bank & Ors. Vrs. Kung Behari Mishra** reported in (1998) 7 SCC 84 the Apex Court held as under :

“17 : These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) 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 inquiry officer had given an adverse finding, as per Karunakar's case (supra) 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 inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry 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 inquiring 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 inquiry 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 findings of the disciplinary authority.”

Thus the action taken by the respondents can not be said to be justified.

The respondents in their reply had tried to support the order on ground that the image of the police has been tarnished.



However, this Court finds the enquiry officer has taken a view that the action was taken by the petitioner upon the directions issued by the superior officer and he therefore can not be held guilty of such action which was in consonance with the direction of his superior

Be that as it may if there was a difference of opinion, opportunity of hearing was required to be given in terms of the order passed by the Supreme Court (supra).

The orders therefore stand vitiated. Accordingly, the writ petition is allowed. The order dated 23.08.2011 and the appellate authority dated 27.01.2012 are quashed and set aside with all consequential benefits.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 36

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