

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18885 of 2013

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Rizwan Ahamad Khan Son Of Md. Samim Khan Resident Of Lahwar, Police Station - Kewati, District - Darbhanga At Present Constable No. 518-Rizwan Ahmad Khan Bihar Military Police - 13 Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna
3. The Additional Director General , Bihar Military Police, Bihar, Patna
4. The Insepector General Of Police, Bihar Military Police, Patna
5. The Deputy Inspector General , Bihar Military Police, North Division, Muzaffarpur
6. The Commandant, Bihar Military Police - 13, Darbhanga
7. The Deputy Commandant, Bihar Military Police - 13, Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary, Adv.
For the State : Mr. Nishant Kumar Jha, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 23-01-2023

1. Heard the parties.

2. The petitioner by way of this writ petition assails the order dated 12.03.2010, passed by the Disciplinary Authority and the Appellate Authority order dated 18.04.2012, whereby he has been punished with stopping of six months increment and a black mark.

3. Learned counsel submits that both the Disciplinary Authority as well as Appellate Authority have failed to take into consideration the evidence which has come on record, which



clearly shows that the charges were not proved against the petitioner.

4. Learned counsel submits that the perversity in appreciating the evidence is sufficient to vitiate the entire order of punishment relying on a Judgment passed in a case of **Anil Kumar Vrs. The Presiding Officer & Ors., reported in AIR (1985) SC 1121** and in **1992 (2) PLJR , 225 (Nawal Kishore Singh Vrs. The Union of India & Ors.)**.

5. I have considered the submissions, in the recent Judgment passed by the Apex Court in two Judges Bench in **Union of India & Ors. Vrs. P. Gunasekaran** as reported in **2015 (2) SCC 610**, the scope of interference by the High Court has been clearly marked as under:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High



Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the



evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

6. The three Judges Bench of the Apex Court in the case of **Central Industrial Security Force and Ors. Vrs. Abrar Ali** as reported in **2017 (4) SCC 507**, reiterated and approved the view taken in **P. Gunasekaran (supra)**, wherein the area and scope of interference has been clearly marked.

7. Taking into consideration the aforesaid factors if the case of the petitioner is examined, this Court finds that the Enquiry Officer was appointed to conduct an enquiry against the petitioner for a charge that the allegations made against him of having committed cheating and fraud with persons assuring them of appointment in the services were sufficient to tarnish the image of Police Department. On account of such allegation the entire selection process was also cancelled. The charges were supported by evidence which had come on record and witnesses also appeared in enquiry. The petitioner was given



due opportunity to defend his case and enquiry report was also made available to him to which he submitted his reply, whereafter the Disciplinary Authority found the charge to be proved against him and punished him in stopping of increment for six months. The Appellate Authority also independently examined the case and confirmed the order of punishment.

8. Learned counsel's contention that the petitioner was acquitted of the allegation of cheating and fraud would not make difference as the charge of tarnishing the image of Police force has been proved in enquiry.

9. Having noticed above, this Court is satisfied that there has been no illegality in conducting of the enquiry. The decision making process is found to be justified and ample opportunity has been granted to the petitioner.

10. In view thereof, no interference is warranted. The writ petition is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 37

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