

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8175 of 2008

=====

Ram Sunder Singh son of Ram Subal Singh resident of Village Laxmipur,
P.O.- Barai, P.S.- Jagdishpur, Distt.- Bhojpur, Sub-Inspector of Police
(dismissed) Bettiah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Patna.
2. Director General of Police, Bihar, Patna.
3. Inspector General of Police, Muzaffarpur.
4. Addl. Inspector General of Police, Muzaffarpur Region, Muzaffarpur.
5. Deputy Director General of Police, Champaran Region, Bettiah.
6. Superintendent of Police, Bettiah, West Champaran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajendar Kishore Prasad, Advocate Mr. Ratan Kumar Sinha, Advocate
For the State	:	Mr. Sita Ram Yadav, GP-16 Mr. Jitendra Kumar, AC to GP-16 Mr. Jayant Kant, DIG, Champaran Range, Bettiah.

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 19-04-2023

Heard learned counsels for respective parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

"1. That the writ petitioner craves
indulgence of this Hon'ble Court for issuance
of appropriate writ(s), direction(s) order(s) to
the Respondents for the following reliefs:-

(i) For issuance of a writ of
certiorari for quashing the order dated
28.3.2008 passed by Respondent no. 4 by
which appeal (against the order of dismissal)



of petitioner has been rejected (Annexure-7).

(ii) For issuance of a writ of certiorari for quashing the order dated 27.7.2005 passed by Respondent no. 5 by which the petitioner has been dismissed from service on the recommendation of the enquiry officer of Bettiah District Departmental Proceeding no. 28/2004 (Annexure-6).

(iii) For issuance of a writ of mandamus commanding the Respondents to show cause as to why for the same charges six persons (Police personnels) have been put under suspension and dismissal order of 5 of them have been set aside and they have been allowed to continue in service with punishment of withholding 3 years increment.

(iv) For issuance of writ of mandamus directing the Respondents not to adopt double standard in penalising the petitioner by dismissing him service and for these same charges, others 5 person's order of dismissal set aside by Respondent no. 3 by allowed to remain in service by imposing punishment of withholding of 3 increments.

(v) For issuance of writ of mandamus upon respondents directing them to allow the petitioner to remain in service by imposing him any punishment like other similarly situated persons with the same charges.

(vi) Any other relief or reliefs to which the petitioner may be found entitled be also given to him."

3. The petitioner was placed under suspension on 22.04.2004 while holding the post of Sub-inspector of Police. It is reliably learnt that Superintendent of Police, West



Champan, Bettiah had passed the suspension order and thereafter suspension order was revoked on 09.08.2004. The enquiry was concluded in proving the charges. The enquiring officer's report was made available to the disciplinary authority in the month of June, 2005 and petitioner's explanation was sought and he had submitted his explanation on 25.05.2005. Based on the aforesaid material information, D.I.G. West Champaran proceeded to impose the penalty of dismissal from service on 27.07.2005. Feeling aggrieved and dissatisfied with the order of penalty of dismissal from service dated 27.07.2005, petitioner preferred appeal before the appellate authority and it was rejected on 28.03.2008. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that appointing authority to the post of Sub-inspector was D.I.G. and the initiation of enquiry should have been by the D.I.G. and not by the Superintendent of Police. It is submitted that charge-memo was not communicated to the petitioner and straightaway disciplinary proceeding was initiated and concluded in imposition of penalty of dismissal from service and its confirmation by the appellate authority. It is submitted that petitioner's explanation on the enquiring officer's report was not considered by the disciplinary and appellate authority. On these



counts impugned action of the respondent are liable to be set aside.

5. *Pet contra*, learned counsel for the respondent fairly submitted that charge-memo memo dated 21.05.2004 was not communicated and even if it is communicated, necessary material is not available on the record so as to demonstrate that petitioner has been provided charge-memo. If charge-memo was communicated to the petitioner in that event the contention of the petitioner that he has not been provided charge-memo is not available. It is further submitted that there are no infirmities in the disciplinary proceeding so as to interfere with the impugned orders.

6. Heard learned counsels for respective parties.

7. Undisputed facts are that petitioner while working as Sub-inspector of Police, was subjected to disciplinary proceeding in framing of charges on 21.05.2004 and it was concluded in imposition of penalty of dismissal from service on 27.07.2005 and further it was affirmed by the appellate authority on 28.03.2008. The respondent-department have not produced any material to show that charge-memo was communicated to the petitioner. It was bounden duty of the disciplinary authority to furnish charge-memo and seek explanation. In non-



compliance of furnishing charge-memo and seeking explanation in a departmental enquiry would go to the root of the matter so as to nullify further proceedings. It is to be noted that the foundation material is charge-memo. If it is not supplied in that event consequential proceedings which are superstructure would fall. Accordingly, petitioner has made out a *prima facie* case so as to interfere with the impugned orders dated 27.07.2005 (Annexure-6) and 28.03.2008 (Annexure- 7) and they are set aside reserving liberty to the respondent to commence the enquiry from the defective stage, like in the present case charge-memo/ charge-sheet. If the proceeding initially initiated by the incompetent authority, the same may also be rectified by the concerned respondent. In other words, disciplinary authority or empowered authority is permitted to initiated enquiry and complete the enquiry proceedings within a period of six months from the date of receipt of this order. All service and monetary benefits shall be considered as and when the final order is passed in the disciplinary proceedings while taking note of Apex Court's decision in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** para 47 to 50 reads



as under:

“47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam V. Presiding Officer, Punjab Dairy Development Corpn. Ltd. V. Kala Singh and Graphite India Ltd. V. Durgapur Projects Ltd.

48. In ECIL V. B. Karunakar and Union of India V. Y.S. Sadhu, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even



if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC V. Mitthu Singh, Akola Taluka Education Society V. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. V. Kashinath Ganapati Kambale.)

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

Principle laid down in the case of *Managing Director, ECIL V. B. Karunakar* reported in (1993) 4 SCC 727 has been reiterated in the case of *The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar* reported in 2022 Live Law (SC) 736.

8. The concerned disciplinary authority or competent authority is hereby directed to regulate the intervening period as



suspension from the date of dismissal i.e. 27.07.2005 till his attaining age of superannuation and retired from service, subsistence allowance shall be calculated and disbursed in favour of the petitioner. Thereafter, depending upon the outcome of disciplinary proceedings, other service benefits shall be regulated in accordance with law within a period of two months from the date of receipt of final order to be passed in disciplinary proceedings be passed and communicated to the petitioner.

9. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.04.2023
Transmission Date	N.A.

