

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18405 of 2014

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Ramadhar Singh Son of Late Nemi Singh Resident of Village - Babhanaul,
P.O. - Babhanaul, P.S. - Dawat, District - Rohtas at Sasaram. At present
working as Constable/119, Railway Police, Ara, Head Quarter Railway
Police, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary (Home), Department of Home, Old Secretariat, Patna.
2. The Director General of Police, Bihar, Old Secretariat, Patna.
3. The Deputy Inspector General, Shahabad Range, Dehri On-Sone.
4. The Superintendent of Police, Bhojpur, District - Bhojpur at Ara.
5. The Superintendent of Police, Rail Police, Patna.
6. The Enquiry Officer-cum-Sergeant Major, Police Line, Bhojpur, Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra
For the Respondent/s : Mr. Kumari Amrita

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 02-08-2023

1. The present writ petition has been filed for quashing the order dated 30.09.2012, passed by the Superintendent of Police, Bhojpur at Ara i.e. the respondent no. 4, whereby and whereunder the petitioner has been inflicted with the punishment of stoppage of increment for 06 months and further, it has been directed that salary for 123 days i.e. for the period



01.07.2011 to 31.10.2011, shall not be paid to the petitioner and instead, the same shall be adjusted as extraordinary leave. The petitioner has also prayed for quashing of the appellate order dated 17.08.2013, passed by the Deputy Inspector General, Shahabad Range, Dehri-On-Sone i.e. the respondent no. 3, by which the appeal filed by the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that while he was working as Constable in the District Police Force, the Superintendent of Police had issued order vide Memo dated 08.06.2011, by which the petitioner was transferred from District Police Force, Bhojpur at Ara to Rail District- Patna. It is the case of the petitioner that though the said transfer order dated 08.06.2011 was not communicated to the petitioner, however, before being relieved, he was diagnosed to be suffering from Jaundice since 23.06.2011, resulting in him not being able to work, whereafter he had contacted a doctor, who disclosed that the petitioner was suffering from Jaundice and after the doctor had given the fitness certificate, he had joined the Patna Rail Police on 23.11.2011. Nonetheless, the Superintendent of Police, Bhojpur at Ara, vide Memo dated 22.01.2012 had issued a Memo of Charge, alleging therein that the petitioner has disobeyed the order of transfer, whereafter a



departmental proceeding was initiated against the petitioner and an Enquiry Officer was appointed. The Enquiry Officer had issued notice to the petitioner, whereupon the petitioner had submitted his written statement and then the Enquiry Officer had submitted the enquiry report dated 11.04.2012, wherein he has opined that the delinquent has submitted a medical certificate as also his explanation and upon perusal of the same, it transpires that the petitioner was relieved on 01.07.2011, however, before that the delinquent had contracted Jaundice on 23.06.2011, on account of which he could not submit his joining at the transferred place but as soon as he got well, he had submitted his joining at the transferred place, hence, the Enquiry Officer had recommended for exoneration of the petitioner from the charges levelled against him. Thereafter, without either differing with the opinion of the Enquiry Officer or issuing any second show cause notice, the disciplinary authority i.e. the respondent no. 4 had passed the impugned order dated 30.09.2012, inflicting punishment of stoppage of one increment for a period of six months and forfeiture of wages for the period of absence i.e. 123 days, however with a direction to adjust the said period as extraordinary leave. The petitioner had then filed an appeal before the respondent no. 3, however the same has



also stood dismissed by an order dated 17.08.2013.

3. The short point raised by the Ld. Counsel for the petitioner for consideration, is that the Enquiry Officer, in his enquiry report dated 11.04.2012, has exonerated the petitioner, however the disciplinary authority has differed with the same and inflicted punishment vide order dated 30.09.2012, without either granting the petitioner an opportunity of being heard or putting forth his defense with regard to the reasons for such disagreement, thus it is submitted that the principles of natural justice have been violated.

4. *Per contra*, though the Ld. counsel for the respondents has vehemently opposed the prayer of the petitioner for quashing the order of punishment dated 30.09.2012 as also the appellate order dated 17.08.2013 but has not been able to show from the records that any second show cause notice was issued to the petitioner, granting him an opportunity to put forth his defense regarding the reasons for disagreement of the disciplinary authority with the findings of the Enquiry Officer so as to warrant issuance of the order of punishment dated 30.09.2012.

5. 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 11.04.2012, 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 such disagreement with the opinion of the Enquiry Officer, has straightway proceeded to pass the impugned order of punishment dated 30.09.2012, in violation of the principles of natural justice. This aspect of the matter has been conclusively decided by a Three Judges 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 no. 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



to costs.”

6. Having regard to the facts and circumstances of the case, 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 and persuade the disciplinary authority to accept the favorable conclusion of the Enquiry Officer and instead, has straight away proceeded to pass the order of punishment dated 30.09.2012, 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 30.09.2012 stands vitiated in the eyes of law.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the order of punishment dated 30.09.2012, passed by the respondent no. 4 is not sustainable in the eyes of law, hence is quashed. Consequently, the appellate order dated 17.08.2013, passed by the respondent no. 3 has also got no legs to stand, as such, the same is also set aside.



8. It is needless to state that the petitioner shall be entitled to all the consequential benefits as a result of quashing of the impugned order dated 30.09.2012 and the appellate order dated 17.08.2013.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.09.2023
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