

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17167 of 2015

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Shiv Kumar Sinha S/o Late Ram Kishore Prasad Sinha resident of Mohalla -
Rambhadar, P.S. Town Hajipur, District - Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Home Police Department Government of Bihar, Patna
3. The Inspector General of Police, Patna Zone, Patna
4. The Deputy Inspector General of Police, Patna Range, Patna
5. The Senior Superintendent of Police, Patna
6. The Superintendent of Police, II Traffic Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Avinash Raushan
Mr. Kumar Kishore
For the Respondent/s : Mr.Manoj Kumar AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 19-01-2023

This writ petition has been filed for following
reliefs:-

“(i) for issuance of a writ in the nature of certiorary or any other appropriate writ for quashing of the order of dismissal from the service of petitioner on the post of Sub-Inspector of Police, passed by the Deputy Inspector General of Police, Central Range, Patna vide its order dated 05.07.2013 contained in Memo No. 155 and the said order was communicated to the petitioner by the Superintendent of Police, Nalanda vide District Order No. 1017 dated 27.07.2013 contained in Memo no. 2968 (Annexure 3 and 4) in a very



mechanical and casual manner having without authority of law.

(ii) for issuance of writ in the nature of mandamus or any other appropriate writ for directing and commanding the responsible respondent authorities to reinstate the petitioner for the post of Sub-Inspector of Police and give all the consequential and ancillary benefits to the petitioner for which, he is legally entitled to.

(iii) for issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 12.02.2014 contained in Memo No. 278 (Anenxure-9) passed by the Inspector General of Police, Central Zone, Patna whereby and whereunder the appeal filed by the petitioner has illegally and arbitrarily been dismissed in a very mechanical manner and without applying the judicious mind.

(iv) for issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 10.06.2016 contained in Memo No. 4635 (Annexure-13) passed by the Joint Secretary, Department of Home, Government of Bihar, Patna whereby and whereunder the Memorial of Appeal filed by the petitioner has illegally and arbitrarily been dismissed in a very mechanical manner without appreciating the fact and circumstances of this case that the alleged charge levelled against this petitioner and for the same set of



alleged charge, this petitioner was subjected to departmental proceeding as well as criminal proceeding, in which he has already been acquitted vide order dated 31.10.2013 by the competent court of jurisdiction.

(v) and further any appropriate writ(s), order(s) or direction(s) as this court deem fit and proper.”

In the nature of the order which this Court proposes to pass it would not require to enter into the relative merit of the case. Suffice it to say that the petitioner was posted as SI, Nalanda, a criminal case was registered against this petitioner under Section 376 of the Indian Penal Code bearing Vaishali PS Case No. 40 of 2007. In the meanwhile, a departmental proceeding was also initiated against the petitioner which culminated into an order of dismissal stands affirmed and put to question before this Court.

Several grounds have been taken by the petitioner to assail the impugned order. One of the grounds is that during the enquiry no presenting officer was appointed and without appointment of the presenting officer under Rule 17(5)(c) of the CCA Rules, 2005 the entire departmental proceeding vitiates. Learned counsel in support of his contention as referred to a decision reported in **2017(4) PLJR 276 (Lalan Pandey vs. State**



of Bihar) to submit that the failure on the part of the department to appoint a Presenting Officer has been held fatal as to the validity of the disciplinary proceeding.

The contention raised on behalf of the petitioner cannot be contested and is supported by the documents on record. Learned counsel appearing on behalf of State in reply submits that he is unable to controvert the contention made on behalf of the petitioner. In para 4 of the supplementary affidavit filed on behalf of respondent no. 5 contends that no presenting officer was appointed in the departmental proceeding held against the petitioner as per the records. He further submits that on the ground of non-appointment of Presenting Officer the departmental proceeding may not be interfered with as the petitioner was dismissed way back in the year 2013 itself.

I have heard the counsel for parties and perused the materials available on records. Rules 17(5)(c) of the CCA Rules, 2005 relied upon by the counsel for petitioner mandates appointment of a Presenting Officer where the disciplinary authority himself does not choose to enquire into the charges, Sub-rule (14) thereof requires the Presenting Officer to lead evidence on which the department seeks to rely for driving home the charges. From bare perusal of memo of charge, it is



apparent that in this case no Presenting Officer was appointed which is a mandatory requirement. The enquiry thus has been held on an invalid notification and on this ground alone the entire proceeding vitiates.

Reference in this regard has been made to another judgment of this Court reported in 1996(1) PLJR 401 (Panchanan Kumar vs. Bihar State Electricity Board) which was a case in which even when the Presenting Officer was appointed for the proceedings, he failed to appear and which roles was assumed by the Enquiry Officer himself. A Bench of this Court taking note of the circumstances, made the following observations:

"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case,



has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice."

In the circumstances so discussed above where there was no Presenting Officer either to lead or to prove the evidence that was collected against the petitioner, the Enquiry Officer could not have assumed this duty to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner. Even if the case of the petitioner is of allegedly being caught red-handed while accepting the bribe and even if strict rules of evidence are not to be followed in the disciplinary proceeding yet a duty is cast on the Enquiry Officer to examine the evidence to see whether it is supportive of the allegation made and connects the delinquent with the charge. In absence of the Presenting Officer this mandatory procedure could not have been discharged by the Enquiry Officer himself.

In view of the discussion and reasons indicated above, the entire proceeding beginning from the Enquiry Officer's impugned at Annexure-1 culminating in punishment order, order dated 05.07.2013 contained in Memo No. 155



(Annexure-3) as well as the order of appeal communicating vide memo No. 278 dated 12.02.2014 (Annexure-9) and memorial at Annexure-10 cannot be upheld and accordingly set aside with all consequential benefits.

Accordingly this writ petition stands allowed.

(Prabhat Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	31.01.2023
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