

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9263 of 2012

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Ishwar Paswan S/O Late Mathura Paswan R/O Vill And P.O. Andp.S.-Bind ,
Block And Anchal-Bind, Distt-Nalanda

... .. Petitioner

Versus

1. The State Of Bihar
2. Collector Nalanda At Bihar Sarif
3. Superintendent Of Police Nalanda, Biharsharif
4. Circle Officer Bind, Distt-Nalanda
5. Senior Deputy Collector -Cum-Inquiry /Conducting Officer, District General
Administration Nalanda Collectorate, Distt-Nalanda
6. Officer-In-Charge S.H.O. P.S.-Bind, Distt-Nalanda

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Anju Kumari @ Anju Narain
For the Respondent/s : Mr.Rajesh Kumar Gp8

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 09-01-2023

Heard learned counsel for the petitioner and the State.

2. Writ petition has been filed for quashing order dated 16.11.2011 (Annexure 9) passed by the Collector, Nalanda at Biharsharif (respondent no.2) by which two increments of the petitioner with non-cumulative effect has been stopped.

3. Short facts giving rise to the writ petition is that the petitioner, while working as Chaukidar under Bind Police Station within the District of Nalanda, was put under suspension on the charge of having connivance in murder, theft of computer, giving protection to the grand son of accused of Bind Police Station Case No. 127 of 2009. He was departmentally proceeded on the charge



of his being involved in a criminal case. After full fledged enquiry, although charge against the petitioner was not proved in the departmental proceeding, the Disciplinary Authority having found the conduct of the petitioner unbecoming of a Government servant, inflicted the punishment of censure and stoppage of two annual increments with non-cumulative effect.

4. Learned counsel for the petitioner assails the impugned order on the ground that the petitioner had been exonerated in the enquiry report. However, without supply of copy of the enquiry report and second show cause, the Disciplinary Authority passed order of punishment and thus the petitioner was deprived of hearing before passing the order of punishment, contrary to the findings of the enquiry report. Reliance is place on the decision of the Hon'ble Apex Court rendered in the case of **Punjab National Bank and others Vs. Kunj Bihar Mishra**, reported in **(1998) 7 SCC 84**.

5. On the other hand, learned counsel appearing for the State supports the impugned order and submits that the impugned order does not suffer from any illegality. He submits that it is well settled that order under departmental proceeding can be passed even though criminal proceeding is pending. In the instant case, the impugned order has been passed against the petitioner on the



preponderance of evidence and conduct of the petitioner. More over, petitioner has not availed the remedy of appeal before the Divisional Commissioner, Patna.

6. It is admitted position that the petitioner was exonerated in the departmental proceeding and without giving him notice to disagreement and second show cause, the Disciplinary Authority passed impugned order of punishment differing with the enquiry report. In the case of Kunj Bihari Mishra (supra) it has been held that *“It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case(supra).”*

7. On careful consideration of the rival submissions of the parties as also the legal precedent discussed above, this Court is of the view that the Disciplinary Authority has passed order of punishment in violation of law laid down by this Court as well as



disciplinary rules, as such, the impugned order of punishment dated 16.11.2011 (Annexure 9) passed by the Collector, Nalanda at Biharsharif (respondent no.2) is hereby set aside.

8. Since this Court has quashed the impugned order only on the ground that the petitioner was not given opportunity to explain his case before passing impugned order of punishment and its being in violation of the principle of natural justice, matter is remitted to the Disciplinary Authority from the stage of enquiry. Liberty is given to the respondents to pass a fresh order after issuing the petitioner second show cause and on consideration of this reply thereof, within a period of two months from the date of receipt of the 2nd show cause reply.

9. Writ petition is accordingly allowed only to the extent indicated above.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.1.2023
Transmission Date	

