

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.925 of 2016

In
Civil Writ Jurisdiction Case No.13122 of 2015

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Dineshwar Singh Son of Late Nagendra Singh R/o vill. - Bhimpura, P.O. Munjhas, P.S. Makhdumpur, District - Jehanabad

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Inspector General of Police, Bihar, Patna
3. Deputy Inspector General of Police, Tirhut Division, Muzaffarpur
4. The Senior Superintendent of Police, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Anil Kumar Choudhary Advocate
For the Respondent/s : Mr.Sc18- Nasrul Hoda Khan Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-01-2023

On 22.12.2022 the following order was passed.

“Shri Jayant Kant who is Senior Superintendent of police, Muzaffarpur has filed a counter affidavit. He has not understood the order dated 24.11.2022 since this Court had directed him to file his personal affidavit while highlighting certain information. On the other hand, he has filed a counter affidavit. Accordingly, counter affidavit filed on behalf of respondent no. 4 is hereby rejected.

He is hereby directed to file



personal affidavit in terms of the order dated 24.11.2022 before the next date of hearing.

Re-list this matter on 03.01.2023.”

Before 03.01.2023 Shri Jayant Kant who was the then Senior Superintendent of police, Muzaffarpur has been promoted to the next higher post and he has been posted out of Muzaffarpur. Therefore, he has not filed his personal affidavit in terms of the order dated 22.12.2022. However, there is no application for recalling the order or filing his personal affidavit, on the other hand, on 03.01.2023 it was noticed that Mr. Rakesh Kumar Senior Superintendent of police, Muzaffarpur who has sworn the affidavit on 02.01.2023 and he was asked to appear in person today.

Perusal of the personal affidavit of Mr. Rakesh Kumar Senior Superintendent of police, Muzaffarpur, his affidavit is also silent about earlier order dated 22.12.2022. In other words, there is no application for recalling the order insofar as who has to file personal affidavit. Senior officers in the Police department were side tracking the Court's orders while filing the personal affidavit, they must be careful in future. For the reasons that prior to 22.12.2022 the then Senior Superintendent of police, Muzaffarpur was directed to file his personal affidavit.



On the other hand, he has filed counter affidavit. Further on 02.01.2023 incumbent Mr. Rakesh Kumar Senior Superintendent of police, Muzaffarpur has sworn his personal affidavit. Both the officers have failed to take note of earlier orders of this Court as to what is required to be complied. Therefore, cost of Rs. 10,000/- is imposed on the Senior Superintendent of police, Muzaffarpur. Cost shall be remitted in the Patna High Court Legal Services Committee within a period of 4 weeks.

The present L.P.A is filed by the appellant-Dineshwar Singh in questioning the order of the learned Single Judge dated 24.08.2015 passed in C.W.J.C. No. 13122 of 2015. The appellant was while working as a Hawaldar at Chandwara Naka under Mithanpura Police Station in District of Muzaffarpur, a case was registered at Mithanpura P.S. case no. 27/05 for the alleged offences under Section 377 and 323 of IPC on 28.02.2005. Arising out of the aforesaid alleged incident, he was subjected to parallel proceedings like initiation of departmental inquiry and criminal proceedings. He was placed under suspension on 01.03.2005 and consequently departmental proceedings was initiated *vide* no. 28/2005. The appellant was under judicial custody. During the pendency of inquiry, he was under



judicial custody, however, as on the date of passing final order, he was out of judicial custody.

In this regard, learned counsel for the appellant submitted that it is a case of ex-parte inquiry and imposition of penalty. The appellant has not been provided ample opportunity of hearing or addressing his grievance or taking defence against the alleged charge in a departmental inquiry. The same was not appreciated by the higher authorities in appeal, memorial application and so also by the learned Single Judge.

Arising out of the aforesaid facts and circumstances, this Court directed the official respondent to file personal affidavit of Senior Superintendent of police, Muzaffarpur on 24.11.2022.

Order dated 24.11.2022 reads as under:-

“Senior Superintendent of Police, Muzaffarpur who is stated to be disciplinary authority and who has dismissed the appellant from service is hereby directed to file his personal affidavit with the following information:-

"(i) Whether charge memo was communicated to the appellant or not?

(ii) If it is communicated whether appellant has filed his explanation or not?

(iii) Appointment of



Inquiring Officer and Presenting Officer and date of such appointment.

(iv) What is the date of holding of inquiry by the inquiring authority whether has he issued notice of appearance of the appellant on particular dates during the course of the inquiry conducted by the inquiring officer or not?

(v) Whether appellant was provided copy of the inquiring officer's report along with the second show cause notice or not?

(vi) If second show cause notice and inquiring officer report is furnished to the appellant in that event whether has he filed objection/explanation or not?

(vii) If appellant has filed his explanation in that event whether have you considered each of the contention stated in the explanation while passing order of dismissal or not?"

If the aforesaid information is not made available through personal affidavit of the Sr. Superintendent of Police, Muzaffarpur, he shall be present in the Court along with the complete records of the disciplinary proceedings.

Relist this matter on 22.12.2022"

Thereafter, counter affidavit was filed in stead of filing personal affidavit and counter affidavit was rejected. In the result, personal affidavit of Mr. Rakesh Kumar Senior Superintendent of police, Muzaffarpur was filed on 02.01.2023.



Today learned counsel for the respondent in the presence of Mr. Rakesh Kumar Senior Superintendent of police, Muzaffarpur fairly submitted that inquiring officer has not maintained day to day order-sheet from the inception till furnishing of inquiring officer's report to the disciplinary authority, this suffice that appellant has not been provided ample opportunity of hearing in a departmental inquiry. That apart, it is noticed that during the inquiry, the appellant was under judicial custody. In all fairness, inquiring authority/disciplinary authority should have deferred the inquiry matter till the appellant was out of judicial custody so as to enable him to give ample opportunity of hearing in a departmental inquiry.

In the light of these facts and circumstances it is a clear case in not providing ample opportunity of hearing to the appellant in a departmental inquiry. That apart, it is beyond the control of the appellant in attending inquiry as he was under judicial custody. The learned Single Judge has failed to appreciate the aforesaid dates and events and the fact that appellant has not been provided ample opportunity and it was beyond his control in attending the inquiry. Hence, the appellant has made out a *prima facie* case so as to interfere with the impugned orders cited in the writ petition C.W.J.C No. 13122 of



2015 dated 24.08.2015 are set aside and order of the learned Single Judge is also set aside.

The matter is remanded to the disciplinary authority in view of the seriousness of the charges levelled against the appellant, in the light 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 Indian Limited & Ors. V. Ananta Saha & Ors.*** reported in (2011) 5 SCC 142 (para 47 to 50). Further Apex Court reiterated the 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.

In view of these facts and circumstances, disciplinary authority is hereby directed to proceed with the inquiry afresh and complete the process of inquiry within a reasonable period of 4 months from the date of receipt of this order. The appellant is hereby directed to cooperate in the disciplinary proceedings. In the present case question of reinstatement or suspension of appellant is not warranted having regard to the fact that he is overage for reinstatement.

The disciplinary authority/competent authority is



hereby directed to regulate the intervening period from the date of removal from service till passing of fresh order in a departmental inquiry within a period of two months from the date of passing final order in a departmental inquiry and communicate the same to the appellant.

Accordingly, present L.P.A. stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2023.
Transmission Date	

