

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12104 of 2012

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Ramdal Rai Son Of Pasupati Rai, Resident of Village Gaighat, Police Station
Semari, District Buxar

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Government of Bihar, Old Secretariat Building, Patna-800015.
2. The Director General of Police, Bihar, Patna
3. The Deputy Inspector General of Police Railway, Bihar, Patna
4. The Superintendent of Police (Rail), Patna
5. The Deputy Superintendent of Police (East), Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the State : Mr. Bijay Kumar Sinha, AC to AAG-5

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

Date : 17-07-2023

In the instant petition, petitioner has prayed for the
following relief(s):-

“(i) For issuance of an appropriate writ/order/direction quashing the order of dismissal of the petitioner dated 29.02.2008 contained in Office Order No. 454/08 dated 25.03.2008 (Annexure - 1) passed by the Superintendent of Police (Rail) in Departmental Proceeding No. 36/04;

(ii) For issuance of an appropriate writ/order/direction quashing the order dated 22.10.2008 contained in Memo No. 677 (Annexure 2) passed by the Deputy Inspector General of Police (Railway), Bihar, Patna passed in Appeal against the Departmental Proceeding No. 36 of 2004;

(iii) For issuance of an appropriate writ/order/direction quashing the order dated 13.05.2011 passed in Appeal Memorial arising



out of departmental proceeding no. 36/04 by the Director General of Police, Bihar (Annexure 3).

(iv) For issuance of an appropriate writ/order/direction quashing the order dated 25.10.2011 passed by the Director General of Police, Bihar in review (Annexure-4) of the order passed in Appeal Memorial.

(v) For grant of such relief(s) as may be deemed fit and proper in the facts and circumstances of the case.”

2. The petitioner was appointed as a Constable. He was subjected to departmental enquiry on the alleged allegations that he had snatched a sum of Rs. 3,400/- from Kanchan Kumar Datta. In this regard, parallel proceedings were stated to have been initiated against the petitioner. On 23.01.2006, he was acquitted in the criminal proceedings, whereas in the departmental inquiry, he has been punished while imposing the penalty of dismissal from service on 25.03.2008. Thereafter, he suffered Appeal, Memorial and Revision on 22.10.2008, 16.05.2011 and 25.10.2011 respectively, hence the present petition.

3. Learned counsel for the petitioner submitted that complainant was not cited and examined as a witness. Similarly, Investigating Officer was not examined and Presenting Officer was not appointed. It is also submitted that identical persons were punished with minor penalty and they have been taken back to duty on 29.07.2011.

4. *Per contra*, learned counsel for the respondent



submitted that there are no infirmities in the departmental inquiry. Having regard to the alleged allegations relating to snatching of a sum of Rs. 3,400/- from complainant - Kanchan Kumar Datta, imposition of penalty of dismissal from service is in order and its confirmation by next higher authorities.

5. Heard the learned counsel for the respective parties.

6. *Prima facie*, the departmental inquiry is not supported by appointment of Presenting Officer who was to present the departmental version before the Inquiry Authority and it is not forthcoming. In other words, Inquiry Authority must have played dual role of Inquiry Officer as well as Presenting Officer. The Complainant has not been cited as witness and obviously there is no examination and non-examination of complainant. Similarly, Investigating Officer is also not examined in support of his report.

7. Having regard to the alleged serious charge levelled against the petitioner, it is a case of remand. However, during pendency of the present petition, the petitioner is already overage for reinstatement. Therefore, it is not a fit case to remand the matter. On the other hand, with the consent of the petitioner, dismissal order could have been treated as compulsory retirement. This Court can not modify the penalty



of dismissal to that of compulsory retirement. It is for the Disciplinary Authority in the light of various pronouncements of the Apex Court.

8. Therefore, order of dismissal dated 25.03.2008 is set aside on cited legal lacunas, consequentially Appeal, Memorial and Revision dated 22.10.2008, 16.05.2011 and 25.10.2011 respectively are set aside. Matter is remanded to the Disciplinary Authority to proceed to convert the dismissal to that of compulsory retirement w.e.f. 25.03.2008 and extend all monetary benefits as if the petitioner has attained age of superannuation with reference to imposition of penalty of compulsory retirement w.e.f. 25.03.2008.

9. Monetary benefits shall be calculated and disbursed within a period of four (4) months from the date of order of passing compulsory retirement by the Disciplinary Authority.

(P. B. Bajanthri, J)

Shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2023.
Transmission Date	NA

