

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1700 of 2023

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Vijay Kumar S/O- Late Sadhu Paswan, Resident of Vill. - Paithan Kawai, PS-
Manigachchi, Dist.- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar through The Chief Secretary Govt. of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. DIG Shahabad Range Dehri-on-Sone
4. SP Rohtas

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ebrahim Kabir with Ms. Shurti Sinha,
Advocates

For the State : Mr.Dhurendra Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-07-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. On 06/01/2020, the petitioner was subjected to charges, founded on a viral video clip, which showed the petitioner to be accepting bribe from truck drivers, while he was posted on traffic duty at Gandhi Murti Chowk at Sasaram town. The petitioner was, at the relevant point of time, a *Havildar*. The petitioner was subjected to proceeding on the basis of the charge dated 06/01/2020, wherein, 06 witnesses have been examined. The result is issuance of Rohtas District Order No.1676 of 2020 dated 27.08.2020 (Annexure 8), whereby he has been awarded the punishment of dismissal from service. He has also been held



to be deprived of dues other than subsistence allowance paid to him for the period, while the proceedings was being conducted. The order is dated to 27/08/2020 and is based on consideration of the inquiry report dated 08/04/2020 (Annxeure-7).

3. The order of dismissal was assailed by the petitioner before the Deputy Inspector General of Police, Shahabad Range, Dehri-on-Sone. The appeal has been rejected under order dated 15/12/2020 upholding the order of dismissal from service, as contained in Annexure 8. The petitioner has also availed the remedy of Memorial against the impugned order of dismissal, dated 27/08/2020 and order of the Appellate Authority, dated 15/12/2020. The Memorial has been rejected by the Director General of Police, Rohtas (Annexure 11) which has been communicated to the petitioner under Rohtas Force order No. 2074/2022, dated 15/07/2022 issued by the Superintendent of Police, Rohtas.

4. The petitioner has put to challenge the Rohtas District Order No.1676 of 2020 dated 27.08.2020 (Annexure 8), whereby he was dismissed as also the order of the Appellate Authority dated 15.12.2020 and order of the Director General, Police communicated under Rohtas Force Order No. 2074/2022, dated 15.07.2022.



5. The petitioner had taken a plea before the authorities that the allegation arising from the viral video was not supported by any eye witnesses, even the maker of the video has not come forward or was examined in the proceedings. It is further submitted that the viral video is unreliable. It is a morphed video and since there is no certification as per Section 65B of the Indian Evidence Act, 1872, the same *per se* could not have been relied upon to visit the petitioner with the civil consequence of dismissal from service. He has also submitted that copy of the CD, containing the viral video clip, which has been displayed in the course of inquiry, was never made available to the petitioner. He was not allowed an opportunity to examine the CD, its contents and veracity.

6. Learned State Counsel, on the other hand, submits that the petitioner was subjected to proceedings based on charges, which were duly communicated to the petitioner. At least three witnesses have deposed before the inquiry officer in support of the viral video clip recognizing the location as well as the fact that the petitioner was the person, who was posted on traffic duty at the location being shown in the viral video clip. After due opportunity and based on this material, which was brought in the course of inquiry, the order of punishment dated



27/08/2020 (Annexure 8) was passed. The petitioner, being a member of the police force, is required to maintain high degree of conduct and integrity. Having regard to the allegations apparent from the viral video and in view of the opportunity granted to the petitioner, the order of punishment was not interfered with by the Appellate Authority in order dated 15/12/2020 (Annexure 9). The State Counsel, thus, also supported the order passed by the Director General of Police, Rohtas as communicated to the petitioner by the Superintendent of Police, Rohtas under his communication dated 15/07/2022.

7. On consideration of rival submissions, this Court would find that the petitioner's assertion that he was not handed over copy of the CD, has not been denied or disputed by the State Counsel. Another aspect of the matter is that three persons, who were examined in the inquiry, namely, *Havildar* No. 151 Sambhu Prasad Yadav, Constable No. 1172, Aryan and Sub Inspector of Police, Shivjee Paswan, were not eye witnesses to the occurrence. They have been brought in the inquiry to depose after viewing the video clip. In their statements, they have identified the locations, based on banner visible in the video clip and have asserted that since the petitioner was the only person, posted at that place, the charge, arising out of the video clip,



appears to be correct.

8. Whether such deposition of persons, who were not eye-witnesses to the occurrence and were deposing only with reference to the video clip, contained in a CD, copy of which was never made available to the petitioner, can be relied upon or not is the issue arising for consideration.

9. The submission of the petitioner's counsel that the video was admitted without any certification, as per Indian Evidence Act, 1872, therefore, also assumes significance since other than CD, there is no material before the inquiry officer in respect of the charges. This Court is of the opinion that the findings, based on identification from the video clip, are clearly unsustainable. The Court's opinion is founded on the facts that copy of CD, wherein the viral video clip was recorded was the only material in the inquiry. The petitioner was never served a copy of the only material (CD) being relied upon in the inquiry. The petitioner was thus deprived of his opportunity to examine/ascertain the veracity of the contents in the CD.

10. The Court would also find from perusal of the inquiry report that deposition of the three above noted persons are based only on viewing of the viral video clip recorded in the CD, copy of which was not made available to the petitioner.



They are not eye witnesses to the occurrence. This Court is conscious of the legal position that findings in the inquiry are to be based on preponderance of probability and not by applying the strict rules of evidence. Nonetheless, the proceedings are to be conducted in compliance with the principles of natural justice and fair play in action, inherent in the procedure contained in the Bihar CCA Rules, 2005.

11. As per procedure prescribed in Rule 17 of the Bihar CCA Rules, 2005, and to comply with the principles of natural justice, it was incumbent upon the respondent authorities to make available a copy of the CD containing the viral video clip, based on which the charges had been framed against the petitioner and contents of which were to be relied upon in the proceedings to bring home the charge. Non-supply of a copy of the CD, therefore, is a fatal procedural lapse, vitiating the findings and impugned order of punishment.

12. The findings and order of punishment dated 27/08/2020 as contained in Annexure 8, therefore, is quashed by this Court. The order of the Appellate Authority, dated 15/12/2020 as contained in Annexure 9 being an affirmation of the illegal order, is also unsustainable and the same is also quashed. This Court would thus consider the order dated 15/07/2022



as contained in Annexure 11 communicating rejection of the petitioner’s Memorial also to be unsustainable and is hereby quashed.

13. Apart from affirming the illegal order, it is manifest from the communication that there is no consideration whatsoever of the petitioner’s plea raised in his elaborate Memorial (Annexure 10), apart from the fact that the findings in the inquiry were without complying with the principles of natural justice. Another aspect of the matter is that the order of the Appellate Authority and the order passed on the Memorial as communicated to the petitioner show total non-application of mind and lack consideration of the plea raised by the petitioner. The orders are cryptic and devoid of reasons rendering the Forum of appeal and Memorial to be nothing, but an empty formality.

14. For the reasons indicated above, the writ application is allowed. The petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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