

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7675 of 2019

=====

Nitish Kumar Son of Late Surendra Prasad Yadav Resident of Village-
Veshambhar Chak, P.S. Amarpur, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Patna, Bihar.
3. The Inspector General of Police, Bhagalpur.
4. The Superintendent of Police, Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Rajive Ranjan Singh
For the Respondent/s : Mr.Md.Nadim Seraj (Gp5)

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 19-02-2024

Learned counsel for the petitioner and counsel for the
State.

2. The present writ petition has been filed for quashing of
the letter no. 4578 dated 31.12.2014 passed by Senior
Superintendent of Police, Bhagalpur in connection with
departmental proceeding no. 59/12 and further for quashing of
the letter no. 317 dated 10.04.2015 passed by Inspector General
of Police, Bhagalpur in connection with departmental
proceeding no. 59 of 2012 and further prayer has been made to
accept joining of the petitioner and to pay the entire salary with
effect from 11.07.2012. The further prayer has been made by
way of I.A. No. 01 of 2023 which was allowed vide order dated



09.01.2015 passed by the Director General of Police, Bihar, Patna by which the memorial of the petitioner has been rejected.

3. Counsel for petitioner submits that order of punishment has been passed by Senior Superintendent of Police, Patna in gross violation of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and neither in appeal nor in memorial, the said procedural mistakes had been corrected by the Officials and the points raised by the petitioner has completely being ignored which is gross injustice with the petitioner and fit case to be considered for judicial review.

4. Counsel for the petitioner further submits that from the final order dated 31.12.2014 contained in Memo No. 4578 passed by the Senior Superintendent of Police, Bhagalpur (Annexure-10 to the writ petition and Annexure-D to the counter affidavit filed on-behalf of respondent no. 4), it is crystal clear that the Enquiry Officer found the delinquent petitioner guilty and returned the file, but there is no whisper in the said order that either the enquiry report and the second show-cause had been issued upon the petitioner and the disciplinary authority *suo motu* passed the final order without granting adequate opportunity to the petitioner to defend.

5. Counsel for the petitioner further submits that in the



appeal, he has challenged the same but the appellate authority, instead of verifying the correctness of the pleadings made in the memorandum of appeal by the petitioner has inserted in his order that show cause has been served whereas neither the show cause nor the enquiry report has ever been served upon him.

6. Counsel for the petitioner submits that in the memorandum also, the Director General of Police, Patna has also not considered the consistent pleading of the petitioner and rejected his memorial.

7. Counsel specifically pleading that the petitioner has neither been provided enquiry report nor has provided second show cause to him without granting opportunity to defend and in gross violation of natural justice, final order has been passed

8. Counsel for the State on the other hand submits that there were two inquiries took place in the present case. In the initial enquiry, the disciplinary authority on the basis of final defence show-cause submitted by the delinquent petitioner to the effect that he has not given adequate opportunity to place his defence, it was decided to do the second enquiry and in the second enquiry petitioner has participated and filed his defence.

9. Counsel submits that the second show-cause notice has also been served upon the delinquent and granting full



opportunity, the final order has been passed. Counsel further submits that in the order of appellate authority, it has been clearly acknowledged that opportunity to file second show cause has been granted to the petitioner and the order passed by the appellate authority is completely in accordance with law. Similarly, the order passed in memo is also passed in accordance with law, therefore, there is no need of any interference in the disciplinary proceedings.

10. Counsel for the respondent submits that vide Annexure-M, a letter written by the petitioner, it is very much clear that the delinquent has filed representation in which he has categorically stated that his initial explanation dated 10.07.2014 be treated as his last defence, and therefore, there is no subsistence in the pleading made by the petitioner, and hence, there is not merit in the writ petition and hence this writ petition is fit to be dismissed.

11. After hearing the parties and perusal of documents, it transpires to this Court that charge-memo has been issued vide Annexure-3 vide Memo No. 2416 dated 20.07.2012. In the said memo, it is nowhere indicated that any presenting officer has been appointed. It is also admitted from both the parties that there were two enquiry reports. The second enquiry report was



submitted on 25.07.2014 before the Disciplinary Authority.

12. The defence taken by the respondent that with regard to the second show-cause a letter has been issued by the petitioner which is Annexure-M. It transpires to this Court that date of the letter is 17.07.2014 whereas the second enquiry report has been submitted on 25.07.2014. The said letter was also written by the delinquent to the enquiry Officer. Meaning thereby, Annexure-M is not the reply of the second Show-cause rather annexure-M is the reply filed by the delinquent before the second enquiry Officer, prior to submission of the enquiry report, and therefore, the contention of the counsel for the State that Annexure-M is the reply in response of the second show-cause, has not been accepted by the Court. In the ordersheet, final order has been under challenge, there is not at all any whisper that second show-case has been issued and enquiry report has been served upon the delinquent petitioner, this is basically gross violation of Rule 17(5) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

13. This Court also acknowledge from the document that there is violation of rule 18(3) Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 as neither show-cause has been issued nor presenting Officer which is



mandatory. In the light of Division Bench of this case reported in the case of *Upendra Pandit Vs. the State of Bihar and Ors. passed in L.P.A. No. 507 of 2017 reported in 2023(4)PLJR 568*

14. Hence, in the light of the above discussion that there are procedure lapses in the departmental proceeding, hence this Court hereby set aside the orders contained in letter no. 4578 dated 31.12.2014 passed by Senior Superintendent of Police, Bhagalpur and letter no. 317 dated 10.04.2015 passed by Inspector General of Police, Bhagalpur in connection with departmental proceeding no. 59/12 and the order of memorial passed by the Director General of Police, Patna dated 02.09.2015.

15. The departmental authority is free to proceed in this matter against the delinquent in accordance with law.

16. Accordingly, this writ petition is hereby allowed.

(Dr. Anshuman, J)

Sunnykr/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

