

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19339 of 2015

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Sury Kant Chaubey Son of Madan Bihari Choubey Resident of village -
Dhadhania, P.O. and P.S. Bhabhua, District - Kaimur Bhabhua At Present
Posted as Circle Inspector B - Katihar, District - Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna
3. The Deputy Inspector General of Police Personal , Bihar, Patna
4. The Additional Director General of Police of Railway, Bihar, Patna
5. The Deputy Inspector, General of Police Railway , Bihar, Patna
6. The Superintendent of Police Rail, Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Mishra, Advocate
	:	Mr. Sourendra Pandey, Advocate
For the State	:	Mr. Ajay Behari Sinha, GA-8
	:	Mr. Upendra Kumar Singh, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 16-01-2024

Heard learned counsel for the petitioner and

learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the

following relief(s);

i. For quashing of the final order bearing District Order No. 1065/07 passed by the Superintendent of Police Rail, Katihar in Rail District Departmental Proceeding No. 2/2003 and issued vide its Memo No. 797 dated 12.08.2007 (Annexure-8) whereby and whereunder petitioner has been reduced to the basic scale for three years.

ii. For quashing of the Katihar Rail District Order No. 217/09 passed on the appeal application preferred by the petitioner by the Deputy Inspector



General of Police Railway, Bihar and issued vide its Memo No. 120/D dated 30.01.09 (Annexure-1) by which appeal of petitioner has been rejected.

iii. For quashing of the order dated 18.01.2012 contained in Memo No.276 dated 23.01.2012 (Annexure-13) passed and issued by the Director General of Police, Bihar, Patna by which memorial of appeal preferred by the petitioner has been rejected as not maintainable.

iv. As a consequence for grant of the consequential benefits of service treating the petitioner in the original scale at the time of issuance of the order dated 12.08.07 (Annexure-8).

v. For any other relief for which petitioner may found entitled in the facts and circumstances of the case.

3. Learned counsel for the petitioner outrightly submits that the order impugned was passed in violation of Rule 18(3) of the Bihar CCA Rule, 2005 and enquiry report was not supplied to the petitioner and the disciplinary authority passed the order. Learned counsel for the petitioner submits that it is admitted fact that the enquiry report was not handed over to the petitioner and even in the present case it appears from the departmental proceeding that there was no presenting officer appointed and he further refers to the enquiry report which suggests that the presenting officer was not appointed and he has relied upon the judgment of the Hon'ble Apex Court passed in the case of ***"Kumaon Mandal Vikas Nigam Ltd. vs. Girja***



Shankar Pant and others reported in 2001(1) SCC 182” para-

33 of which is quoted hereinbelow;

33. *Incidentally in Locabail (Locabail (UK) Ltd. v. Bayfield Properties Ltd. the Court of Appeal upon a detail analysis of the oft-cited decision in R. v. Gough together with the Dimes case, Pinochet case, Australian High Court's decision in the case of J.R.L., ex p C.J.L., Re as also the Federal Court in Ebner, Re and on the decision of the Constitutional Court of South Africa in President of the Republic of South Africa v. South African Rugby Football Union stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided, it further observed:*

"By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the Judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken



terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party-witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be."

4. He further submits that during the pendency of the writ petition, the petitioner retired.

5. Learned counsel for the State, on the other hand,



opposes the prayer of the writ petition and submits that all the proceedings was conducted in accordance with law and due opportunity was given to the petitioner to defend his case and there is no latches on the part of the respondent-authority and in the department proceeding, the petitioner was inflicted punishment.

6. Considering the aforesaid facts, the impugned order was passed in violation of Rule 18(3) of the Bihar CCA Rules 2005, copy of the enquiry report was not supplied to the petitioner even in the departmental proceeding no presenting officer was appointed, the orders dated 12.08.2007(*Annexure-8*), 30.01.2009 (*Annexure-1*) and 23.01.2012 (*Annexure-13*) are set aside and the State-authority is directed to pay all the consequential benefits to the petitioner within a period of three months from the date of the receipt/production of the copy of this order and pension of the petitioner should be revised accordingly.

7. Accordingly, this writ petition is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2024
Transmission Date	NA

