

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8322 of 2018

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Dhirendra Kumar son of Late Chandradeo Prasad, resident of Village-
Murarchak, P.O.- Chiraili, P.S.- Khijarsarai, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Rail, Bihar, Patna.
4. The Superintendent of Police, Rail, Patna.
5. The Inspector of Police, Rail, Mokama-cum-Enquiry Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bibhakar Tiwary, Adv. Mr. Sushil Kr. Singh, Adv.
For the Respondent/s	:	Mr. Suman Kr. Jha, (AC to AAG-3)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 09-07-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ application has been filed challenging the order passed by the disciplinary authority contained in Memo No. 524 dated 02.03.2016, the order passed by the appellate authority contained in Memo No. 653 dated 12.07.2016 as well as the order passed by the D.G.P, Bihar, Patna in memorial contained in Memo No. 9011 dated 26.07.2017.

3. Learned counsel for the petitioner has confined his argument only on two points. Firstly, he submits that the disciplinary proceeding has to be conducted following the rules laid down under the Bihar Government Servants

(Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules of 2005'), according to which for fair departmental proceeding, it has to be conducted in presence of the Presenting Officer and secondly, on the point that there should be second show cause, if punishment is major. He submits that from the order passed by the D.G.P., Bihar, Patna, it has been observed that the punishment is major. He further submits that the procedure established by law has not been followed and, particularly, in the case of ***Upendra Pandit Vs. The State of Bihar & Ors.*** dated ***05.09.2023*** passed in ***L.P.A. No. 507 of 2017***, the Division Bench has said so that the departmental proceeding in absence of the Presenting Officer is not proper.

4. Learned counsel for the State fairly agrees that from the record, it transpires that the departmental proceeding has been conducted in absence of the Presenting Officer and it is also true that in the order passed by the D.G.P., Bihar, Patna, it has been observed that punishment is major. He further submits that though there is lacuna in the proceeding but on the said ground, the petitioner cannot be exonerated and a direction may be issued to the authority concerned to take a decision afresh in accordance with law.

5. In the light of the submissions made and upon

considering the documents, this Court finds substance in the argument made by the learned counsel for the petitioner.

6. In the light of the arguments made by the parties, it appears that the disciplinary proceeding has been conducted in absence of the Presenting Officer and as well as second show cause has also not been issued. Therefore, in this view of the matter, the order passed by the disciplinary authority contained in Memo No. 524 dated 02.03.2016, the order passed by the appellate authority contained in Memo No. 653 dated 12.07.2016 as well as the order passed by the D.G.P, Bihar, Patna contained in Memo No. 9011 dated 26.07.2017 are set aside.

7. The authority concerned is directed to take a decision afresh and conclude the proceeding following the provisions of the CCA Rules of 2005 within six months from the date of production of a copy of this order.

8. With this observation and direction, the present writ application stands allowed.

(Dr. Anshuman, J)

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