

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5969 of 2018

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Mahendra Pratap Thakur @ Mahendra Sharma Son of Late Ram Nagina Thakur, Resident of Deohalia, P.O.- Deohalia, P.S.- Ramgarh, District-Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary cum commissioner, Department of Home Police, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Magadh Range, Gaya, District-Gaya.
5. The Superintendent of Police, Aurangabad, District Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suman Kumar Jha, Adv.
For the Respondent/s : Mr. Manish Kumar, GP-4

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 23-04-2024

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

2. The present writ application has been filed for quashing of the order of Disciplinary Authority dated 23.02.1993, as well as the order dated 02.07.2010 passed by the Appellate Authority, as well as the order dated 07.09.2017 contained in Memo No. 40/326485 communicated to the petitioner vide Memo No. 3615 dated 22.09.2017 by which his memorial was rejected.

3. Learned counsel for the petitioner submits that the petitioner was appointed in the year 1990 on the post of constable on compassionate ground being a constable no. 1042

in Bihar Police, District-Aurangabad. He further submits that the petitioner had been satisfactorily performing his duties up to the satisfaction of his higher authorities. He was posted at Aurangabad Police Headquarter to Police Station Rafiganj for wireless duty. He further submits that due to some false complaint, the petitioner was arrested on 16.11.1991 in connection with Darihat P.S. Case No. 52 of 1991 and subsequently, he was also accused in another case bearing Ankothi Gola P.S. Case No. 462 of 1991. He further submits that the petitioner was in jail, then he was put in suspension vide order contained in Memo No. 2234 of 1991 dated 26.11.1991. During the period of suspension, he was entitled for subsistence allowance but the same was not paid to him. He further submits that the petitioner was released on bail on 16.05.1992, thereafter he submitted his joining at the Police Headquarter at Aurangabad and prayed for subsistence allowance but his joining was not accepted, nor he was paid the subsistence allowance. He further submits that at the time of joining, the petitioner was not informed about the initiation of any departmental proceeding against him, nor any charge-sheet was served upon him. He submits that the petitioner is contested in both the criminal cases, *i.e.* Ankothi Gola P.S. Case No. 462 of

1991 and Darihat P.S. Case No. 52 of 1991 and in both cases, he was acquitted in the year 2002 and 2007 respectively. Thereafter, after acquittal in the year 2007, the petitioner had informed to the Superintendent of Police, Aurangabad in this regard through post dated 02.03.2007, subsequently, sent reminder on 20.03.2007 thereafter. When no response come, then petitioner had filed a writ petition before this Hon'ble Court bearing C.W.J.C. No. 13031 of 2007. In the said writ petition, liberty was granted to the petitioner to prefer memorial. With this direction, the petitioner had withdrawn the writ petition and preferred memorial, raising all the issues. He further submits that the said memorial was rejected by the authorities and communication in this regard was made to the petitioner vide Memo No. 3615 dated 22.09.2017. He further submits that the order of dismissal has been passed without jurisdiction and without authority of law. He further submits that it is *void ab initio*, as it has been passed in gross violation of the provisions of Article 311(2) of the Constitution of India. He further submits that in the disciplinary proceeding, the petitioner was neither served charge memo, nor informed about the charges in the departmental proceeding conducted against him. In result, he could not defend himself before the Conducting

Officer. He further submits that no document, no evidence were served upon the petitioner. List of memos and documents were also not served upon him. In result, the petitioner could not cross-examine the witnesses. He has not given any opportunity in this matter and in gross violation of natural justice, a disciplinary order has been passed relating to dismissal. As such, the petitioner has preferred the present writ application challenging all the orders, *i.e.* original order, appellate order and the order passed in the memorial.

4. Learned counsel for the petitioner further raised and relied on a letter which he has sent to the Superintendent of Police, Aurangabad through registered post on 10.04.1993. He has also relied on a judgment made in the case of ***Ram Lal Vs. State of Rajasthan & Ors.*** in ***Civil Appeal No. 7935 of 2023*** in which the petitioner was acquitted and once acquittal made in the criminal case, then the disciplinary proceeding ought to be ended/set aside.

5. In this regard, learned counsel for the State submits that it is very much clear that the acquittal of the petitioner in both the cases are not clean acquittal rather benefit of doubt has been given. He further submits that the present writ application is fit to be dismissed on the basis of petitioner's own

pleading which he has made in paragraph 13 of the writ petition, as the petitioner has full knowledge of the departmental proceeding, due to the reason that in paragraph 13 of the writ petition, it has been stated that the petitioner has received two letters from the Office of Superintendent of Police, Aurangabad under Memo No. 846 dated 18.03.1993 in which he was directed to present before the Conducting Officer at 10:00 A.M. on 15.04.1993 for enquiry. He further submits that he also admits in paragraph 14 of the writ petition that a show cause notice issued by the Superintendent of Police, Aurangabad vide Memo No. 186 dated 23.01.1993 was also served to the petitioner. He further submits that the petitioner is the employee of police and according to law, the provision of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules of 2005') is applicable. He further submits that there is a special provision under Rule 17(20) of the Rules of 2005 in which it has been indicated that *ex-parte* proceeding may be made by the Inquiry Officer and it is well within the power of the Inquiry Officer. He further submits that the petitioner was intentionally not opted to appear in the disciplinary proceeding and it is due to this reason, the proceeding was continued against him *ex-parte*. The

submissions made by the petitioner that he has no knowledge of departmental proceeding is absolutely wrong by virtue of his own pleadings.

6. Upon perusal of the pleadings made in paragraphs 13 and 14 of the writ petition, it transpires to this Court that the petitioner has full knowledge of disciplinary proceeding and therefore, this Court is not inclined to interfere in the same, as *ex-parte* proceeding has been made completely in accordance with the Rule 17(20) of the Rules of 2005 which indicates that *ex-parte* proceeding is permissible.

7. This Court is of the view that the allegation against the petitioner in the disciplinary proceeding is serious in nature that he used to extract money, showing himself as *Daroga*.

8. In the light of the above discussion, this Court is not inclined to interfere and the present writ application stands dismissed.

(Dr. Anshuman, J)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
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