

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10088 of 2015

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Dinesh Prasad Son of late Bhondil Mahto resident of Dak Bunglow Road,
Harnaut, P.S. Harnaut, District Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General, Bihar Military Police, Bihar, Patna.
4. The Inspector General of Police, Bihar Military Police, Bihar, Patna.
5. The Deputy Inspector General of Police, Military Police (Northern Division), Muzaffarpur.
6. The Commandant, Bihar Military Police - 8, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha. Adv.

For the Respondent/s : Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 24-12-2021

The present writ petition has been filed for quashing the order dated 09.12.2014, issued by the Inspector General of Police, Bihar Military Police, Bihar, Patna (Respondent No. 4) whereby and whereunder the appeal filed by the petitioner has been dismissed as also for quashing the order dated 07.04.2014, issued by the Deputy Inspector General of Police, Military Police (Northern Division), Muzaffarpur (Respondent No. 5) whereby and whereunder the petitioner has been dismissed



from service. The petitioner has also prayed for quashing the inquiry report dated 17.11.2012, pertaining to the departmental proceeding no. 3/2012, as also the supplementary inquiry report submitted by the Conducting Officer-cum-Dy. Superintendent of Police, BMP-8.

2. The brief facts of the case are that the petitioner was appointed as a Clerk in the office of the Superintendent of Police, Darbhanga on 13.02.1988. In between 16.2.2006 to 12.2.2007, the petitioner remained posted as Clerk in the office of the Superintendent of Police, Muzaffarpur and also worked as Accountant till 22.9.2006, whereafter, on 13.2.2008, he was transferred to BMP-8, Begusarai. On 01.10.2010, an FIR bearing Muzaffarpur Town P.S. Case No. 401/2010 was lodged against the then Accountant of the office of the Superintendent of Police, Muzaffarpur, namely, Sri Sushil Kumar Choudhary, on the allegation that he had embezzled public money by making manipulation in the pay bills. In the said FIR, some other constables and non-public servants were also



made accused, but the petitioner was not named in the FIR. On 30.6.2011, the Commandant, Bihar Military Police-8, Begusarai (Respondent No. 6) asked for an explanation from the petitioner vide memo nos. 2681 and 2682, regarding non-renewal of the term deposit made with the Bank upon maturity and non-submission of compliance report, pursuant to an objection being raised by the Accountant General, regarding non-disposal of ten matters, pertaining to withholding of pay, regarding making lesser recovery than required to be made in order no. 1556/08 and taking cashier allowance of Rs. 300/- per month although it had been stopped since January, 2010. The petitioner is stated to have submitted his explanation on 29.8.2011 wherein he had stated that no loss had been caused to the Government and he was merely complying with the directions of the Superior Officers as also the petitioner is stated to have furnished cogent explanation, as would be apparent from his reply dated 29.08.2011.

3. The Additional Director General of Police, BMP,



had then, by his letter dated 15.06.2011, communicated to the Respondent No. 6 regarding certain discrepancies in maintenance of accounts and an inspection report of the Transport Section and Accounts Section was submitted with a note that the Head Clerks / Accountant appears to be negligent towards their work. On the basis of the said inspection report, the Respondent No. 6, vide memo dated 15.09.2011, issued a memo of charge to the petitioner calling for an explanation from the petitioner and then the petitioner was suspended on 11.3.2012 in contemplation of initiation of a departmental inquiry, whereafter, he was served with a charge-sheet dated 20.03.2012, issued by DIG, Military Police (Northern Division), Muzaffarpur, containing the same and similar charges, which were levelled in the memo dated 15.09.2011 and the only new charge added in the memo of charge against the petitioner was regarding him having been made an accused in Muzaffarpur Town P.S. Case No. 401/2010. The petitioner had then surrendered in connection with



the aforesaid Muzaffarpur Town P.S. Case No. 401/2010 and was released on bail, by an order dated 13.12.2012 passed by the Hon'be Patna High Court in Criminal Miscellaneous No. 33395 of 2012, whereafter he had submitted his joining on 26.12.2012.

4. It is the contention of the learned counsel for the petitioner that the Inquiry Officer had concluded the departmental proceeding in question in absence of the petitioner, by recording that the petitioner had not participated in the departmental proceeding and had submitted his inquiry report on 17.11.2012, although the petitioner was in custody at that time. After release from judicial custody, the petitioner had submitted an application before the Respondent No. 6 with a copy to the Conducting Officer on 02.02.2013, informing them that he had submitted joining on 26.12.2012, whereafter he has been relieved to submit his joining in the office of the Superintendent of Police, Nawada, hence, he had expressed his willingness to participate in the



departmental proceeding and cross-examine the witnesses. It is a matter of record that the Conducting Officer had reopened the departmental inquiry and had fixed two dates i.e. one on 27.06.2013, on which date no proceeding was conducted and then on 12.07.2013, on which date, the petitioner had appeared and submitted his defence. It is equally a matter of record that the Inquiry Officer had not altered his inquiry report dated 17.11.2012 and had submitted a supplementary inquiry report dated 25.03.2014, which amply demonstrates that only one witness was examined and cross-examined, however, the petitioner was not permitted to cross-examine the other witnesses, who had been examined earlier and the Inquiry Officer had only considered the additional charge i.e. charge contained in paragraph no. 7 of the memo of charge i.e. regarding the petitioner being an accused in Muzaffarpur Town P.S. Case No. 401/2010, which the Inquiry Officer had found to have been proved since in the said case charge-sheet had been



submitted against the petitioner on 23.5.2012. Nonetheless, the Inquiry Officer had clearly observed that since he has already submitted his findings / opinion on the rest of the charges in his earlier inquiry report, charge contained in paragraph no. 7 of the memo of charge was only being dealt with.

5. The disciplinary authority had then issued a second show cause notice dated 26.03.2014, granting seven days time to the petitioner to submit his reply, which was received by the petitioner only on 30.03.2014, however, without waiting for the reply of the petitioner, the petitioner was dismissed from service by the DIG, Military Police (Northern Division), Muzaffarpur, vide memo dated 07.04.2014. The petitioner had then filed an appeal before the Inspector General of Police, Military Police, Bihar, Patna on 26.06.2014, however, the same has also been dismissed, by an order dated 09.12.2014 passed by the Inspector General of Police, Bihar Military Police, Bihar, Patna, without appreciating the



issues raised by the petitioner.

6. The learned counsel for the petitioner has submitted that the memo of charge issued to the petitioner is in contravention of Rule 17(3) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005'). It is further submitted that no Presenting Officer was appointed in the present case as per the mandate of Rule 17(5)(c) of the Rules, 2005. It is also submitted that the entire disciplinary inquiry has been conducted behind the back of the petitioner and the inquiry report dated 17.11.2012 has been submitted on a date when the petitioner was in custody, thus, the entire inquiry proceedings stand vitiated. It is further submitted that the petitioner has neither been given any chance to cross-examine the witnesses nor has been given any chance to put forth his defence and by way of mere formality, when he had submitted his joining, after grant of bail by an order dated 13.12.2012 passed by the Hon'ble Patna High Court and had submitted a



representation before the Inquiry Officer on 02.02.2013 to give him opportunity to participate in the departmental proceeding, the Inquiry Officer, by way of an empty formality, had sought for an explanation from the petitioner, however, had immediately thereafter filed his supplementary inquiry report dated 25.03.2014 wherein only the charge contained in paragraph no. 7 of the memo of charge had been dealt with and it was stated therein that the rest of the charges have already been dealt with in the earlier inquiry report dated 17.11.2012. It is equally a matter of record that the petitioner was not permitted to cross-examine any of the witnesses examined earlier except one witness and that too partly. Thus, it is submitted that apparently, the entire departmental inquiry has been conducted behind the back of the petitioner and the petitioner has been precluded from submitting his defence or cross-examining the witnesses, resulting in violation of the principles of natural justice, consequently, the entire inquiry proceedings stand vitiated.



7. It is further submitted by the Ld. Counsel for the petitioner that the petitioner was granted only seven days time for filing reply to the second show cause notice dated 26.03.2014, in violation of Rule 18(3) of the Rules, 2005, which provides for grant of fifteen days time to the delinquent to submit his written representation / submission to the second show cause notice. Nonetheless, it is submitted that a bare perusal of the impugned order dated 07.04.2014 would show that the same is based on a one sided perverse inquiry report submitted by the Inquiry Officer and has thus not taken into account the stand of the petitioner as also is vitiated on the ground of non-grant of appropriate opportunity to the petitioner in terms of Rule 18(3) of the Rules, 2005. Finally, it is submitted that a bare perusal of the appellate order dated 09.12.2014 would show that the same has also not considered the issues raised by the petitioner and merely narrates the sequence of events, which had taken place during the course of the departmental proceedings, apart from being an unreasoned



order which does not depict any application of mind, hence the same also stands vitiated in the eyes of Law.

8. *Per contra*, the learned counsel for the Respondent-State has submitted that there is no procedural irregularity in conduct of the departmental proceeding in question and there has been no procedural lapse, thus, this Court would not sit in appeal and re-appreciate the evidence, hence, no interference is required in the order of punishment dated 07.04.2014 or for that matter, the appellate order dated 09.12.2014. It is further submitted that the petitioner was granted several opportunities to place his defence inasmuch as firstly, vide letter dated 11.05.2011, the Respondent No. 6 had sought an explanation from the petitioner regarding the charges levelled against him, whereafter, another letter was issued to the petitioner on 30.06.2011 asking the petitioner to submit his show cause reply. In fact, the petitioner was also asked to submit his show cause reply vide memo dated 15.09.2011 wherein,



on the basis of the inspection report made available by the ADG, Bihar Military Police, four charges had been framed. It is also submitted by the learned counsel for the Respondent-State that the petitioner was well aware about the ongoing departmental proceeding, but he chose not to inform the Inquiry Officer regarding his custody, thus, the Inquiry Officer cannot be faulted with in case he had proceeded with the inquiry proceedings ex parte and submitted the inquiry report dated 17.11.2012. In fact, the Inquiry Officer had reopened the inquiry after the petitioner had submitted a representation before the Inquiry Officer on 02.02.2013 and after granting full opportunity to the petitioner, he had submitted a supplementary inquiry report dated 25.03.2014, whereafter a second show cause notice was issued to the petitioner dated 26.03.2014, which was served on him on 30.03.2014, but the petitioner chose not to reply to the same, thus, it cannot be said that the petitioner was not granted ample opportunity of hearing by the disciplinary authority.



Again, the petitioner was granted opportunity inasmuch as he had filed an appeal, which was duly considered by the appellate authority i.e. the Respondent No. 4 and thereafter, the same was dismissed by a reasoned order dated 09.12.2014. In such view of the matter, it is submitted that the present writ petition is bereft of any merit and fit to be dismissed. As far as appointment of the presenting officer is concerned, it has been submitted by the learned counsel for the Respondent-State that the office of the Director General of Police, Bihar, Patna, vide letter dated 21.07.2017, has issued guidelines with regard to conduct of departmental proceeding and the same provides for appointment of a presenting officer, however, in the present case, the departmental proceeding was concluded prior to issuance of the said letter dated 21.07.2017, as such, no presenting officer was appointed.

9. I have heard the learned counsel for the parties and gone through the materials on record from which I find that the petitioner was admittedly



in custody from the month of March, 2012 to the month of December, 2012 inasmuch as he was granted bail by the Hon'ble Patna High Court, by an order dated 13.12.2012, whereas the departmental proceeding had been initiated by issuance of a charge-sheet dated 20.03.2012 whereafter, the Inquiry Officer had been appointed, pursuant whereof, the Inquiry Officer had conducted an ex parte inquiry and had submitted his detailed inquiry report dated 17.11.2012 with regard to the charges levelled in six paragraphs of the memo of charges, finding the same to have been proved, however, the Inquiry Officer had desisted from making any comments on paragraph no. 7 of the memo of charges. This Court further finds that after the petitioner was released from custody, he had submitted his joining on 26.12.2012 and had then filed a representation dated 02.02.2013 before the Inquiry Officer to grant him opportunity to participate in the departmental proceeding and submit his defence, nonetheless, the Inquiry Officer, by way of an



empty formality, had asked for a reply from the petitioner, but had failed to permit the petitioner to cross-examine five other witnesses, who had been examined by the department/prosecution during the course of the earlier inquiry proceedings and had then submitted a supplementary inquiry report dated 25.03.2014 wherein only the charge contained in paragraph no. 7 of the memo of charge was dealt with and it was stated therein that the rest of the charges have already been dealt with in the earlier inquiry report dated 17.11.2012. Therefore, this Court is of the view that major part of the inquiry proceedings have been held behind the back of the petitioner and as far as the charges contained in paragraphs no. 1 to 6 of the memo of charges are concerned, no opportunity has been granted to the petitioner and moreover, the Inquiry Officer has failed to consider, in his supplementary inquiry report dated 25.03.2014, the defence submitted by the petitioner to the charges levelled against him, meaning thereby that the ex-parte findings arrived



at by the Inquiry Officer against the petitioner in his earlier inquiry report dated 17.11.2012 have stood un-reversed/un-altered and have not been reconsidered, hence, admittedly, the petitioner has been precluded from grant of adequate opportunity to defend himself, thus, vitiating the entire inquiry proceedings including the inquiry report dated 17.11.2012 and the supplementary inquiry report dated 25.03.2014, which is also perfunctory inasmuch as vide charge no. 7, it has been alleged that the petitioner is not having satisfactory service since an FIR has been lodged against him, which in any view of the matter, cannot be held to be proved unless and until the said criminal case results in conviction of the petitioner (by the learned Trial Court). It may be pointed out that the inquiry report dated 17.11.2012 is admittedly an ex parte inquiry report inasmuch as the inquiry proceedings were conducted by the Inquiry Officer at a time when the petitioner was in custody. In such view of the matter, the inquiry report dated 17.11.2012 and



the supplementary inquiry report dated 25.3.2014 are not sustainable in the eyes of Law, hence are quashed.

10. This Court also finds that no presenting officer was appointed as per the mandate of Rule 17(5)(c) of the Rules, 2005, hence, on this ground also, the entire inquiry proceedings stand vitiated. In this regard, it would be to relevant to refer to the Judgments rendered by the Hon'ble Apex Court in the case of ***State of U.P. and others v. Saroj Kr. Sinha***, reported in ***(2010) 2 SCC 772*** and the one rendered in the case of ***Union of India v. Ram Lakhan Sharma***, reported in ***(2018) 7 SCC 670***.

11. Another aspect of the matter is that the second show cause notice dated 26.03.2014 has been issued in violation of Rule 18 (3) of the Rules, 2005, which postulates grant of fifteen days time to a Government servant, being proceeded against, to submit reply, however, in the present case not even seven days time was granted inasmuch as admittedly, though the second show



cause notice was issued to the petitioner on 26.03.2014, granting 7 days time to submit reply, but the same could be served on the petitioner only on 30.03.2014, thus precluding the petitioner from filing his reply to the second show cause notice dated 26.3.2014, therefore, on this ground, the second cause notice dated 26.03.2014 stands vitiated in the eyes of law, hence is also set aside.

12. Considering the fact that the inquiry report dated 17.11.2012 and the supplementary inquiry report dated 25.03.2014 have already been quashed, this Court finds that the order of punishment dated 07.04.2014 has got no legs to stand inasmuch as the same is based solely on the findings of the Inquiry Officer. This Court further finds that the order of punishment dated 07.04.2014 is unsustainable in the eyes of law since the same has not take into account the defence of the petitioner and moreover, the second show cause notice itself has been held to be vitiated in the eyes of law, herein above, hence, the order of punishment dated 07.04.2014, passed



by the Respondent No. 5, is also set aside. As far as the appellate order dated 09.12.2014, passed by the Respondent No. 4, is concerned, the same is also perverse inasmuch as the same does not consider the issues raised by the petitioner in his appeal and smacks of non-application of mind apart from the fact that the same has got no legs to stand since the inquiry reports and the order of punishment dated 07.04.2014 have already been quashed by this Court, hence the appellate order dated 09.12.2014, passed by the Respondent No. 4, is also quashed.

13. Having regard to the facts and circumstances of the case and for the grounds mentioned hereinabove, the writ petition stands allowed on the aforesaid terms, however, the matter is remitted back to the disciplinary authority with liberty to proceed afresh from the stage of issuance of memo of charges.

14. It is needless to state that as a consequence of quashing of the order of dismissal/punishment



dated 07.04.2014 and the appellate order dated 09.12.2014, though the petitioner shall be entitled to be reinstated forthwith, however, the payment of the consequential benefits shall abide by the final outcome of the fresh disciplinary proceedings to be conducted by the disciplinary authority, as aforesaid, nonetheless, the same shall be completed within a period of six months from the date of receipt / production of a copy of this order, failing which, the petitioner shall become entitled to payment of all the consequential benefits including 100% back wages, as a result of quashing of the impugned orders dated 07.4.2014 and 09.12.2014. It is made clear that the petitioner shall cooperate in the fresh proceedings to be conducted by the disciplinary authority, failing which the disciplinary authority shall be free to proceed ex parte against the petitioner.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	14.9.2021
Uploading Date	24.01.2022
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