IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7851 of 2023

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Chandan Kumar S/o-Ram Bharat Ram Resident of Village-Akodhi, PS-Ramgarh, District-Kaimur (Bhabhua).

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. D.G. of Police Bihar, Patna.
3. D.I.G. Begusarai Range, Begusarai.
4. S.P. Begusarai
5. Principal Constable Training School, Nathnagar, District-Bhagalpur.

... ... Respondent/s

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Appearance:
For the Petitioner/s : Mrs. Shruti Sinha, Advocate
For the Respondent/s : Mr. Md. Nadim Seraj (GP-5)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 05-12-2023

This writ petition has been filed for quashing the order dt. 8.5.2021, passed by the Superintendent of Police, Begusarai, whereby and whereunder the petitioner has been dismissed from service as also the appellate order dt. 26.04.2022, passed by the Deputy Inspector General, Begusarai Range, Begusarai, whereby the appeal filed by the petitioner has been rejected.

2. The brief facts of the case, according to the

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petitioner, are that the petitioner had joined the services of Bihar Police as Driver Constable on 22.09.2017, in the district of Begusarai, whereafter he was sent for training at Constable Training Centre, Nathnagar, Bhagalpur, however a charge sheet was served upon the petitioner dated 17.03.2020, *inter alia* alleging therein that on 02.01.2020 at about 8:00 P.M. in the evening, the petitioner, in an inebriated condition, had created ruckus in the mess with other trainees, whereupon the Nathnagar Police force had arrived and breath analyzer test of the petitioner was carried out, in which alcohol was detected and the test result showed Blood Alcohol Content as 145ml/100gm, leading to lodging of Nathnagar P.S. Case No. 06 of 2020 dated 02.01.2020 under Section 37 (C) of the Bihar Prohibition and Excise Act, 2016, whereupon the petitioner was sent to jail. The petitioner was subsequently granted bail by an order dated 13.01.2020 passed by the Ld. Court of Additional Sessions Judge-II-cum-Special (Excise Act), Judge, Bhagalpur and then a departmental proceeding

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was initiated against the petitioner, whereafter, the Enquiry Officer had conducted an enquiry and submitted an enquiry report, finding the charges levelled against the petitioner to have been proved.

3. The disciplinary authority had then issued a second show cause notice dated 12.04.2021 asking the petitioner to show cause as to why he be not dismissed from service in view of the fact that the charges levelled against him have stood proved, during the course of the enquiry conducted by the Enquiry Officer, however, a copy of the enquiry report was not served upon the petitioner. The petitioner had then filed his reply to the said second show cause notice and then the Superintendent of Police, Begusarai, by the impugned order dt. 08.05.2021 had inflicted the punishment of dismissal upon the petitioner. The petitioner had then filed an appeal, however, the same has also stood rejected by an order dated 26.04.2022 passed by the Deputy Inspector

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General, Begusarai Range, Begusarai. This is how the petitioner is before this Court.

4. The learned counsel for the petitioner has raised a short point for consideration i.e. to the effect that since a copy of the enquiry report was not served upon the petitioner, along with the second show cause notice dated 12.04.2021, the same has not only resulted in denial of reasonable opportunity to the petitioner to prove his innocence but also amounts to breach of the principles of natural justice, hence the entire enquiry proceedings culminating into passing of the punishment order dated 08.05.2021 and the appellate order dated 26.04.2022 are vitiated in the eyes of law, hence should be set aside.

5. *Per contra*, the learned counsel for the respondent-State has though opposed the present writ petition and refuted the arguments advanced by the learned counsel for the petitioner, but he has not been able to deny the fact that the enquiry report submitted by the Enquiry Officer was not

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supplied to the petitioner, along with the second show cause notice dated 12.04.2021 or, thereafter, hence it is submitted that the matter be remanded back to the disciplinary authority from the stage of submission of enquiry report by the Enquiry Officer.

6. I have heard the learned counsel for the parties and perused the materials on record, from which this Court finds that the enquiry report indicting the petitioner has admittedly not been served upon the petitioner along with the second show cause notice dated 12.04.2021, thus the petitioner has been denied a reasonable opportunity to put forth his defence, resulting in breach of the principles of natural justice and violation of Article 311 (2) of the Constitution of India, hence, the entire enquiry proceedings, from the stage of issuance of second show cause notice, being unfair, unjust and illegal stands vitiated in the eyes of law. Reference in this regard be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India vs. Mohd. Ramzan***

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Khan, reported in ***(1991) 1 SCC 588*** as also the Constitution Bench judgment rendered by the Hon'ble Apex Court in the case of ***Managing Director, ECIL Hyderabad vs. B. Karunakar and others*** reported in ***(1993) 4 SCC 727***.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I deem it fit and proper to quash the impugned order of punishment dated 08.05.2021, passed by the Superintendent of Police, Begusarai, inflicting the punishment of dismissal upon the petitioner as also the appellate order dated 26.04.2022, passed by the Deputy Inspector General, Begusarai Range, Begusarai and remit the matter back to the disciplinary authority with liberty to proceed afresh from the stage of issuance of second show cause notice. It is needless to state that as a consequence of quashing of the order of dismissal dated 08.05.2021 and the appellate order dated 26.04.2022, though the petitioner shall be entitled

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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.

8. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.12.2023
Transmission Date	N/A

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