

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 20370 of 2021

=====
Santosh Kumar Pankaj son of Sri Rameshwar Prasad, resident of Bharub,
P.S.-Obra, District-Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Headquarter), Bihar, Patna.
4. The Inspector General of Police, (Headquarter) Bihar, Patna.
5. The Inspector General of Police, Tirhut Range, Bihar, Patna.
6. The Superintendent of Police, Vaishali.

... .. Respondents

=====
Appearance:

For the Petitioner/s : Mr. Vinay Ranjan, Adv.
Mr. Abhishek Teerthankar, Adv.
For the Respondent/s : Mr. Manish Kumar, GP-4
Mr. Ajay Kumar, AC to GP-4

=====
CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 30-11-2023

The present writ petition has been filed seeking quashing of the order dated 21.03.2021, as contained in memo dated 23.03.2021, passed by the Superintendent of Police, Vaishali, whereby and whereunder punishment has been inflicted upon the petitioner to the extent of forfeiture of two increments with cumulative effect as also the petitioner has been debarred from being posted as Station House Officer/Outpost incharge for ten years. The petitioner has also prayed for quashing of the appellate order dated 26.7.2021, passed by the Inspector



General of Police, Tirhut Range, Muzaffarpur, whereby and whereunder the appeal filed by the petitioner has been rejected.

2. The brief facts of the case according to the petitioner is that he was appointed as Sub-Inspector of Police in the year, 2009 and while discharging his duties to the full satisfaction of all concerned, he was posted as Station House Officer, Ganga Bridge Police Station, Vaishali, on 25.09.2020, where also, he was discharging his duties diligently. On 25.11.2020, he got information that certain miscreants are engaged in manufacturing of illicit liquor and had also amassed huge quantity of illicit liquor, whereupon sanha entry bearing entry no. 645 was made and while the petitioner was getting ready with his police force to conduct a raid at the alleged place of occurrence, the Anti-Liquor Task Force (hereinafter referred to as the "ALTF") reached at the Ganga Bridge Police Station and thereafter, another sanha entry bearing entry No. 646 was made, whereupon a joint inspection was conducted at the alleged place of occurrence and huge quantity of illicit country made liquor, illicit liquor manufacturing kiln and ten thousand liters of raw jawa mahua mix was recovered.

3. The petitioner was then put under suspension, vide order dated 29.11.2020, issued by the Director General of Police,



Bihar, Patna and a departmental proceeding was initiated, vide memo dated 30.11.2020 as also a charge-sheet in Praptra 'Ka' was served upon the petitioner, inter alia, alleging therein that vide letter dated 24.11.2020, issued by the Bihar Police Headquarters (Excise & Prohibition Department), Bihar, Patna, it has been stipulated that in case, any illicit liquor is recovered by the Anti Liquor Task Force from within the area falling under the jurisdiction of a particular police station, the Officer-in-Charge of the said police station would be held guilty and severe legal and administrative action shall be taken, hence the disciplinary authority has decided to initiate departmental proceeding against the petitioner, inasmuch as on 25.11.2020, the ALTF had conducted a raid at a place, which falls within the jurisdiction of the Ganga Bridge Police Station, Vaishali and huge quantity of illicit country made liquor and Jawa Mahua mix was recovered, which depicts gross negligence and dereliction in discharge of duties on the part of the petitioner, who was the then Station House Officer, Ganga Bridge Police Station, Vaishali.

4. The Enquiry Officer had then conducted the disciplinary proceedings and had submitted an enquiry report dated 24.02.2021, wherein he had found the petitioner to be not guilty



of the charges levelled against him, nonetheless, the disciplinary authority, without issuing any notice/2nd show cause notice to the petitioner, setting out therein the reasons for difference of opinion with the findings of the Enquiry Officer, had merely issued a letter dated 28.02.2021 to the petitioner, enclosing a copy of the enquiry report and asking him to submit his defense explanation on the issue of imposition of punishment. The petitioner had then submitted his reply on 05.03.2021, stating therein that during the brief period of posting at Ganga Bridge Police Station for two months, he had lodged 9 FIRs under the provisions of the Bihar Excise and Prohibition Act, 2016/2018 and had also made recovery of 4584.63 liters of country made / foreign liquor as also had ensured that peace is maintained during the course of Vidhan Sabha elections and during the festivals of Dusshera, Deepawali & Chhat, apart from maintaining full proof law and order in the area in question. In fact, the petitioner had also submitted in his reply that prior to the ALTF having arrived at the Ganga Bridge Police Station, the petitioner had already made a sanha entry with regard to the illegal activities being carried out by the liquor Mafia at the alleged place of occurrence and was preparing to conduct a raid, but in the meantime, since the ALTF had arrived at the police station, a



joint operation was carried out and illicit liquor was recovered.

5. The disciplinary authority i.e. the Superintendent of Police, Vaishali, had then, without any application of mind and without considering the reply filed by the petitioner, in a mechanical manner, by the impugned order dated 21.03.2021, had inflicted the punishment of forfeiture of two increments with cumulative effect and had also debarred the petitioner from being posted as Officer-in-Charge / Outpost in-charge at any police station for a period of 10 years. The petitioner had then filed an Appeal, however, the same has also stood rejected by an order dated 26.7.2021, passed by the Inspector General of Police, Tirhut Range, Muzaffarpur.

6. The learned counsel for the petitioner has raised a limited legal issue for consideration by this Court to the effect that after the Enquiry Officer had exonerated the petitioner, vide enquiry report dated 24.2.2021, it was incumbent upon the disciplinary authority to have recorded its tentative reasons for disagreement, in case the disciplinary authority had chosen to disagree with the opinion of the Enquiry Officer and then an opportunity was required to be given to the petitioner to represent before the disciplinary authority and put forth his defence to the reasons recorded by the disciplinary authority for disagreeing with the



opinion of the Enquiry Officer, however, in the present case, neither any reason has been recorded by the disciplinary authority for disagreeing with the findings of the Enquiry officer nor any opportunity has been granted to the petitioner to put forth his defence to the same, as is apparent from the second show cause notice dated 28.2.2021, whereas on the contrary, it appears that the disciplinary authority had already premeditated infliction of punishment upon the petitioner, as is also apparent from the second show cause notice dated 28.2.2021, which not only smacks of bias and perversity, but also depicts that the disciplinary authority had made up its mind to positively inflict punishment upon the petitioner. In this regard, the Ld. counsel for the petitioner has relied on a judgment, rendered by the Hon'ble Apex Court in the case of *Lav Nigam vs. Chairman & MD., ITI Ltd. & Anr.*, reported in (2006) 9 SCC 440, paragraph nos. 9, 10, 11 and 13 whereof are reproduced herein below:-

“9. Challenging the orders of the respondent authorities the appellant filed a writ petition before the High Court. The appellant specifically raised the issue that the disciplinary authority was obliged to give a separate show-cause notice if the disciplinary authority differed with the inquiry officer. The High Court also held that there was no need to give two separate show-cause notices one before the disciplinary authority found against



the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined in one. The writ petition was accordingly dismissed.

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. In *Punjab National Bank v. Kunj Behari Misra* [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783] a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held:

“The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it



records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision & can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.”

7. *Per contra*, though the Learned counsel for the Respondent-State has submitted that the impugned orders dated 23.03.2021 and 26.07.2021, do not suffer from any infirmity, however, he has not been able to show that any show cause notice was issued to the petitioner, mentioning therein the reasons for disagreement with the findings of the Enquiry



Officer and asking his response to the same.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also considering the fact that admittedly, no show cause notice has been issued to the petitioner seeking his response with regard to the reasons for disagreement with the findings of the Enquiry Officer, resulting in breach of the principles of natural justice, apart from the fact that the present case is squarely covered by the judgment, rendered by the Hon'ble Apex Court in the case of *Lav Nigam* (supra), this Court finds that the order dated 23.03.2021, passed by the Superintendent of Police, Vaishali, as also the appellate order dated 26.07.2021, passed by the Inspector General of Police, Tirhut Range, Muzaffarpur are unfair, unjust and illegal, thus stands vitiated in the eyes of law, hence are quashed.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.12.2023
Transmission Date	NA

