

(2015) 07 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16738 of 2007

Chandrabali Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 PAT CK 0048

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Jitendra Pandey, for the Appellant

Final Decision : Allowed

Judgement

Rakesh Kumar, J.

1. Heard learned counsel for the petitioner and Sri Prabhat Kumar Singh, learned Standing Counsel No. 12.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order, contained in D.O. No. 6888/2007 passed by the Dy. Inspector General of Police, Central Range, Patna, whereby "Black Mark" entered in the service record of the petitioner was approved.

3. Learned counsel for the petitioner submits that in violation of principles of natural justice, a departmental proceeding was initiated against the petitioner for a measure charge, as enshrined in Rule 828(f) of the Bihar Police Manual. It has been pleaded that only in the year 2006 after his pay scale under the ACP was not fixed in accordance with law, the petitioner inquired and thereafter he noticed that in his ACR there was one "Black Mark". On further enquiry, it transpired that against him a departmental proceeding was initiated and on the basis of ex parte enquiry, punishment order was passed by the City Superintendent of Police, Patna. After his great persuasion he could obtain order

of the disciplinary authority and, thereafter, he preferred an appeal before the Dy. Inspector General of Police. In the appeal, a specific plea was taken by the petitioner that in the departmental enquiry, no memo of charge was served nor any notice was issued to the petitioner. Even on the basis of certain documents, it was pleaded that at the time of alleged occurrence, the duty was not allocated to the petitioner. In support of his submission, the petitioner had brought on record copy of the Police Station Diary Entry. However, the Dy. Inspector General of Police, vide Annexure-1 to the writ petition rejected the memo of appeal, which has been assailed in the present writ petition.

4. Learned counsel for the petitioner emphatically argued on the basis of averment made in the writ petition that no memo of charge was issued nor any information was given to the petitioner and, as such enquiry and consequential punishment order as well as the order of the Dy. Inspector General of Police are liable to be set aside.

5. Sri Prabhat Kumar Singh, learned Standing Counsel No. 12 has opposed the prayer of the petitioner. He firstly argued that the appeal was preferred belatedly i.e. after about eight years and, as such, this Court may refrain from interfering with the matter. He further submits that on the basis of the order of the Dy. Inspector General of Police, it is evident that despite issuance of notice by the Conducting Officer, the petitioner had not participated in the proceeding.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of Annexure-1 to the writ petition i.e. order of the Dy. Inspector General of Police, it is not clear as to whether in the departmental proceeding, even memo of charge was served on the petitioner or not. Moreover, once in the appeal, the petitioner had taken a specific plea that no notice was issued to him in the departmental proceeding and further in support of his claim, certain documents were brought on record, the appellate authority in normal course was required to examine the same and pass order dealing with plea taken by the petitioner. However, in the order impugned, no such indication has been given. Only the Dy. Inspector General of Police has indicated that he had perused the record and, thereafter the order was passed. In para- 6 of the writ petition, the petitioner has taken a specific stand that no charge was given to the petitioner and enquiry was conducted behind back of the petitioner. This submission has not been categorically denied. In a vague manner, the submission made in the writ petition has been dealt with in the counter affidavit. In the counter affidavit, not a single chit of paper has been brought on record to indicate that in the departmental proceeding, any notice was issued to the petitioner. Once the Department had proceeded against the petitioner for a measure punishment, it was mandatorily required to give memo of charge to the petitioner and proceed with the proceeding in accordance with law. The Order further does not indicate that even after conclusion of the enquiry report whether enquiry report was communicated to the petitioner or not. Meaning thereby that the entire proceeding was initiated behind back of the petitioner, which is

contrary to the principle of natural justice and, as such, order of the disciplinary authority as well as the order of the appellate authority are hereby set aside.

7. Learned counsel for the State has tried to persuade the Court that since the order impugned has been set aside on the ground of providing no opportunity to the petitioner, the matter may be remitted back to the authority concerned. However, the Court is of the opinion that since in the present case the order of the disciplinary authority was passed long back in the year 1999 for an alleged charge, which occurred in the year 1998, at this belated stage, it would not be appropriate to pass order for remitting back the matter.

The writ petition stand allowed.