

(2005) 04 PAT CK 0086
In the Patna High Court
Case No : CWJC No. 4045 of 2000

Girijanand Pratihasta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Citation : (2005) 4 PLJR 785

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State. The petitioner assails the order at Annexure 5 by which he has been awarded the punishment of one black mark to be entered into his service book and that the period of suspension of 60 days be counted as earned leave. The petitioner also question the order at Annexure 3 by which the aforesaid punishment has been enhanced and he has been reduced to the minimum of the time scale of pay of Constable for three years.

2. The writ application raises a very short question of law for consideration. In the departmental proceeding, it is not in dispute, that the petitioner was exonerated. The grievance of the petitioner would be that the Disciplinary Authority differed with the report of the Enquiry Officer and straightaway by the impugned order at Annexure 5 proceeded to impose the punishment. The superior officer in exercise of suo motu powers under the Police Manual proceeded to enhance the punishment. Quite obviously if Annexure 5 is not sustainable in law Annexure 3 would automatically fall.

3. The law with regard to the procedure to be followed by the Disciplinary Authority in a case where the findings of the Enquiry Officer are in favour of the delinquent, but the Disciplinary Authority proposes to differ are by now well settled by the Apex Court in the case of Punjab National Bank and Others Vs. Sh.

Kunj Behari Misra, reiterated in *Yoginath D. Bagde Vs. State of Maharashtra and Another*, .

4. When the Enquiry Officer returns a finding in favour of the delinquent it obviously creates a valuable right in him. Before he could be deprived of the same the basic canon of justice would require that he had an opportunity to meet the grounds on which the benefit is sought to be taken away. The law would therefore require the Disciplinary Authority to tentatively set out the points of difference with the Enquiry Officer and the reasons why he proposes to differ with the same. This would have to be accompanied by the proposed punishment opined by the Disciplinary Authority in view of his tentative reasons for disagreement. The delinquent would be required to have an opportunity to meet the same and only thereafter final orders could be passed by the Disciplinary Authority. In the present case quite apart from the fact that the factual assertion of the petitioner in this regard, in the writ application, remains unanswered in the counter affidavit, this Court also finds that Annexure 5 is in itself quite telling about the non-compliance of the procedure as aforesaid by the Disciplinary Authority.

5. In the result Annexure 5 is hereby set aside. Annexure 3 automatically as a consequence does not survive.

6. It would however be open for the respondents to proceed afresh from the stage of submission of the enquiry report should they so desire. The writ application accordingly stands allowed with the observations as above.