

(2018) 06 PAT CK 0066

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11867 Of 2013

Sheomuni Prasad

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 341, 386, 504

Citation : (2018) 3 PLJR 458

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Sanjay Kumar Verma, Shyam Kishor Sharma

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. Petitioner has filed this case for setting aside the order dated 13.09.2011 passed by the Superintendent of Police, Bettiah imposing punishment of forfeiting increment for six months salary which is equivalent to one black mark as well as order dated 09.02.2012 passed by Appellate Authority, Deputy Inspector General of Police, rejecting the appeal of petitioner.
3. Briefly stated, the facts of the case is that a departmental proceeding was initiated against petitioner when he was posted as Officer-in-charge, Mataria police station and a case was lodged being Mataria police station case No. 38 of 2010 lodged under Sections 341, 386 and 504 of Indian Penal Code. The case was instituted on the basis of written complaint with thumb impression of the informant Gatta Sah and during supervision made by the Inspector of police and S.D.P.O. said informant Gatta Sah denied of lodging any such case with said allegations against the accused.

4. In the Supervision report of sub-divisional police officer, Narkatiaganj dated 25.06.2010 and supervision report of police inspector, Shikarpur circle

dated 30.06.2010 the authorities have found Mataria police station case No. 38 of 2010 dated 19.06.2010 under Sections 341, 386, 504, 34 IPC as a mistake of fact.

5. During the supervision the informant Gatta Sah has stated that SHO Matiyariya police station (petitioner) had taken thumb impression over a plain

paper and informant had neither given name of Mukhiya Nyaz Ansari nor he had alleged any rangadari and he had no knowledge who had written the

FIR and when he came to know about the FIR he was surprised and thereafter filed a compromise petition before the C.J.M., Bettiah. In his

supervision note it was further observed that petitioner had committed many error while instituting this case.

6. The Superintendent of Police on the basis of above supervision note directed to submit final form in this case as mistake of fact and also directed

S.D.P.O., Narkatiaganj to issue show cause to the petitioner for initiating departmental proceeding against him.

7. A memo dated 31.07.2010 was issued from the office of Superintendent of Police to the S.D.P.O. to issue show cause to petitioner and thereafter

show cause dated 18.08.2010 was issued from the office of S.D.P.O. Narkatiaganj but no reply was submitted by petitioner to said show cause.

8. A memo of charge dated 08.11.2010 was issued by the Superintendent of Police, Bettiah as contained in Annexure-1 in which it was alleged that

informant of Matariya P.S. Case No. 38 of 2010 which was supervised by S.D.P.O., informant stated that he is an illiterate person and had given a

blank paper with thumb impression and is not aware that who wrote the FIR and he did not levelled any allegation against Mukhiya Niyaz of

demanding ransom and threatening to kill. He was not aware of institution of FIR and when he came to know about it he filed a compromise petition.

Allegation against petitioner is that on the basis of written complaint written by some different person and informant being illiterate he ought to have

verified the name of writer of FIR before instituting the case. He was asked to submit his show cause against such allegation but he never submitted

his show cause which amounts to indiscipline, negligence and unbecoming of a police officer. The memo of charge included copy of FIR No. 38 of

2010, supervision report of Sub- divisional Police Officer and police inspector dated 25.06.2010 and 30.06.2010, memo dated 31.07.2010 and memo dated 10.08.2010 and name of three witnesses.

9. Petitioner in his reply stated that he did not receive memo dated 10.08.2010 as such he could not submit any explanation. Departmental proceeding was initiated against petitioner and Inquiry Officer was appointed to conduct the enquiry and Sub-Divisional Police Officer, Bettiah was appointed as Inquiry Officer and from the order sheet of departmental proceeding it appears that 1st date of proceeding was 30.12.2010 on which date delinquent as well as witnesses were directed to appear but none appeared. The proceeding was adjourned for 31.01.2011 on which date petitioner had appeared but witnesses did not appeared and next date was fixed on 25.02.2011 on which date petitioner submitted his explanation but witnesses did not appear and case was adjourned for 17.03.2011 on which date also petitioner appeared but witnesses did not appeared and case was adjourned for 11.04.2011, 03.06.2011, 15.06.2011, 07.08.2011 and 20.08.2011 but no proceeding was held on said dates and by subsequent orders on order sheet dated 30.08.2011 it appears that Superintendent of Police had directed to hold combined departmental proceeding on 26.08.2011 for which no notice was served upon petitioner and witnesses were examined on 26.08.2011 in absence of petitioner and petitioner also submitted his explanation on 29.08.2011 and proceeding was concluded on 30.08.2011.

10. In its enquiry report dated 30.08.2011 the Inquiry Officer has stated that on 26.08.2011 in the police head quarter, combined enquiry proceeding was held on the direction of Superintendent of Police in which three witnesses were examined on behalf of department. 1st witness is Sashi Bhushan Mishra, Head Clerk in the office of S.P. who has proved memo dated 31.07.2010 which has been marked as Exhibit-3. 2nd witness is typist Sepoy 235 Satya Prakash Staff in the office of S.D.P.O. office, who has proved memo dated 10.08.2010 which has been marked as Exhibit-4, beside these two supervision reports of S.D.P.O. and Inspector of Police has been proved by the Enquiry Officer himself which has been marked as Exhibits- 1 & 2. The Inquiry Officer thereafter has considered explanation dated 29.08.2011 submitted by petitioner in which he has stated that he did not receive show cause dated 10.08.2010 as such he could not file any reply to it. He further

stated that Matariya police station Case No. 38 of 2010 was

instituted on the basis of written report with thumb impression of informant, as such informant is best person to tell name of writer of FIR.

11. The Inquiry Officer on the basis of exhibits and statement of witnesses found the charges to be proved and sent his enquiry report to the

Disciplinary Authority. The Disciplinary Authority on the basis of enquiry report agreed with findings of Inquiry Officer and without serving copy of

enquiry report found petitioner guilty of charge and imposed punishment of stoppage of increment on six months salary which is equivalent to one

black mark. The appeal preferred by petitioner was also dismissed.

12. After going through the records of Disciplinary proceeding conducted against the petitioner which was produced on behalf of State counsel it

appears that the proceedings against the petitioner was not conducted as per procedure rules and witnesses were examined by the Inquiry Officer in

absence of petitioner on 26.08.2011 which was not the date fixed for proceeding, as such petitioner could not appear on said date and at the instance

of S.P., Bettiah, departmental proceeding was preponed on 26.08.2011 on which date three witnesses appeared and their statement was recorded in

the absence of petitioner.

13. It further appears that witnesses have proved the documents as exhibits. The witnesses were competent to prove the documents but they were

not competent to prove the contents of the documents as same could only be proved by the author/writer of said documents in presence of delinquent

with right of cross-examination. Although evidence act is not applicable in departmental proceedings but principle of natural justice has to be observed

and there should be some legal evidence to prove the charges, as such, the inquiry proceeding is not in accordance with rules to conduct/hold inquiry.

14. The Inquiry Officer is supposed to be independent adjudicator and is not a representative of department or disciplinary authority and as such he

could not have proved the documentary evidence on behalf of department. Although the punishment imposed appears to be a minor punishment but

there is procedural infirmity and irregularity in holding the enquiry proceedings and even the copy of enquiry report was not served as such, whole

proceeding stands vitiated. Once this Court finds that enquiry is vitiated all consequential acts, actions, orders would fall to the ground as a result of

which the order passed by Disciplinary Authority as well as appellate authority are not sustainable and set aside. However, this order will not preclude the Disciplinary Authority to initiate fresh proceeding from the stage it stood vitiated.

15. The writ petition stands allowed.

16. The original records of the departmental proceeding produced by the learned counsel for the State be returned to him, immediately.