

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11749 of 2008

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Omprakash Bhardwaj, son of Parashnath Bharadwaj, resident of village Keshav
Bigha, P.s. Tikari, District Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General-cum-Inspector General of Police, Bihar, Patna
3. The Deputy Inspector General of Police, Munger Zone, District –Munger
4. The Superintendent of Police Begusarai, District Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Adv.

Mr. Siya Ram Shahi, Adv.

Mr. Rakesh Kumar, Adv.

For the Respondent/s :

Mr. Amaresh Kumar Sinha, A.C. to GP 1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-08-2016

Heard Mr. Dinu Kumar, learned counsel for the petitioner and

Mr.Amaresh Kumar Sinha, A. C. to G.A.1 for the State.

The petitioner is an Ex-Constable with the Bihar Police, is aggrieved by the order bearing Memo No.4514 dated 5.9.2007 passed by the Director General- cum- Inspector General of Police, Bihar Patna whereby the memorial submitted by the petitioner has been rejected thus confirming the rejection of the appeal filed by the petitioner by the Deputy Inspector General of Police, Munger Zone vide order bearing Memo No. 327 dated 8.2.2007 as well as the order of penalty of dismissal imposed by the Superintendent of Police, Begusarai vide order bearing Memo No. 5564 dated 25.8.2006. The order of penalty passed by the disciplinary authority, the order in appeal and the memorial are impugned at Annexures-9, 10 and 11

respectively to the writ petition.

As mentioned, the petitioner is an ex-constable. He was served with a charge memo bearing Memo No. 650 dated 23.1.2003 impugned at Annexure-3. The petitioner has been charged of colluding with other police officials posted at the Chariya Bariyarpur police station who caught hold of one Dhanik Yadav and inflicted such mental and physical torture that he expired on 2.11.2002. A law and order situation arising, led to institution of Chariya Bariyarpur P.S. Case No. 101 of 2002. A complaint was filed by the kin of the deceased and it is during the course of supervision in Chariya Bariyarpur P.S. Case No.113 of 2002 arising from the Complaint so filed, that the involvement of the petitioner transpired leading to his suspension on 23.1.2003 and institution of a disciplinary proceedings. The disciplinary proceedings have culminated in the order(s) impugned at Annexures- 9, 10 and 11 respectively. The petitioner being aggrieved is before this Court.

Rather a brief argument was advanced by Mr. Dinu Kumar to question the impugned orders. He submits that the sole basis for involvement of the petitioner in the occurrence, is the supervision note in Chariya Bariyarpur P.S. Case No. 113 of 2002. It is argued that bare perusal of the F.I.R. in question which is arising from a Complaint Case No. 1500(C) of 2002 filed by the brother of the deceased, a copy of which is present at Annexure-2, would reflect that



though the informant has named seven accused including the Officer Incharge but there is no mention of the petitioner. He thus submits that in absence of any evidence to connect the petitioner with the death of Dhanik Yadav, the finding recorded in the supervision note is whimsical and conjectural. Learned counsel in reference to the evidence discussed in the chargesheet present at Annexure-3 and the name of the witnesses, submits that even the evidence so led during the proceeding does not support the conclusion that the petitioner was anywhere involved in the incident. In substance, the argument of Mr. Dinu Kumar is that the implication of the petitioner is simply based on the supervision note and is not resting on any cogent evidence.

The arguments of Mr. Dinu Kumar is contested by learned State counsel and who has also produced the record of the proceeding which includes the statement of the witnesses but what I find from the statement is that each of the witness led by the department merely endorses the opinion in the supervision note which led to the inclusion of the petitioner in the criminal case with nothing further to corroborate his involvement.

I have heard learned counsel for the parties and perused the records. Since the name of the petitioner has been included on the basis of the supervision note, I would first consider the opinion recorded therein. The supervision note is placed at page 21 of the file so produced which records the evidence of the informant and others



but none of them has named the petitioner. While the informant has specifically charged the Officer Incharge Harendra Singh and other accused named in the complaint which was registered as Chariya Bariyarpur P.S. Case No. 113 of 2002 for the death but he nowhere names the petitioner. In fact while the informant says that Bhola Jha got the deceased to the Police Station, the others have named Assistant Sub Inspector Shiv Shankar Jha who brought the deceased Dhanik Yadav to the police station. There is one evidence of Ram Dev Yadav and Looten Yadav who have stated that he saw the deceased Dhanik Yadav being accompanied with the Munsif of the police station but while Ram Dev Yadav saw him on a rickshaw, Looten Yadav says that he saw them on a motor cycle. This is the only instance taken note of in the supervision note. The conclusion drawn by the Deputy Superintendent of Police, Begusarai Headquarters regarding the petitioner's involvement is on the basis of the villagers' opinion and not on basis of any substantive piece of evidence.

The evidence led by the department in the proceeding includes one Binod Kumar posted as Apradh Prawakkta and Saryu Kumar, Inspector of Police, Manjhaul who have merely endorsed the inclusion of the name of the petitioner in the criminal case by virtue of the supervision note. They are not a witness to the alleged occurrence.

The order of the disciplinary authority impugned at Annexure-9



of the writ petition though takes notice of the submission of the petitioner that none of the witnesses have endorsed his participation in the occurrence but it is rather surprising that even when the Superintendent of Police takes note of the statement of the Assistant Sub Inspector Shiv Shankar Jha of taking Dhanik Yadav, the deceased to the police station but yet he has proceeded to conclude that there were also a constable accompanying him. The conclusion of the Superintendent of Police is de hors the evidence on record. It is not in dispute that the petitioner was posted in the police station as literate constable but in absence of any allegation directed against him and even when the accusation is specific against the persons named in the F.I.R. arising from Chariya Bariyarpur P.S. Case no. 113 of 2002 yet it is merely on suspicion and on account of the posting of the petitioner in the police station that the Superintendent of Police in a sweeping manner has dismissed the petitioner which finding is not based on evidence. The opinion of the Superintendent of Police has been affirmed by the Deputy Inspector General of Police in appeal as well as the Director General of Police in revision and none of them have bothered to examine the records to satisfy themselves whether there is any allegation against the petitioner of assaulting the deceased except that he was posted in the police station. Clearly the opinion of the disciplinary authority as affirmed by the superior authority is based on no evidence and cannot be upheld as the finding is perverse.

Though it is long settled that disciplinary proceedings are not governed by strict rules of evidence and rest on preponderance of probability but it would be stretching this principle beyond its seams if the petitioner would be made to suffer penalty merely on his posting in the police station with nothing adverse being reported.

For the reasons aforementioned, the order of dismissal passed by the Superintendent of Police impugned at Annexure-9 and its affirmation in appeal vide Annexure-10 as well as in the rejection of the memorial vide Annexure-11 cannot be upheld and are accordingly set aside. The writ petition is allowed. As a consequence the petitioner stands restored to his post and considering the position explained, he would be entitled to 50% of his arrears of salary.

The writ petition is allowed but without any order as to costs.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	17-8-16
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