

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.778 of 2015

Along with

Interlocutory Application No. 3248 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 8604 of 2005

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Bijay Kumar Singh. Son of Late Deo Baran Singh. Resident of village - Hadiyabad,
Police Station - Ayer, District - Bhojpur (Ara).

.... Petitioner/s / Appellant/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General, Military Police (Central Range), Patna.
4. The Commandant, Bihar Military Police -18 Bodh Gaya.

....Respondent/s / Respondent/s

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh with
Mr. Manish Prakash, Advocates.

For the Respondent/s : Mr. H.S. Roy, AC to PAAG-1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 04-08-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 3248 of 2015

The Interlocutory Application has been filed seeking
condonation of 2 years and 253 days delay in filing of the Letters
Patent Appeal.

Upon hearing learned counsel for the parties and
considering the averments made in the Interlocutory Application,
we find that sufficient cause has been shown for delay in filing of
the appeal. Consequently, the same is condoned.

Interlocutory Application No. 3248 of 2015 stands disposed off.

Re.: Letters Patent Appeal No. 778 of 2015

The challenge in the present writ application is to the order dated 03.05.2012 passed by the learned Single Bench by which C.W.J.C. No. 8604 of 2005 filed by the appellant has been dismissed.

The appellant was appointed as Constable on 27.08.1988 and posted in the Bihar Military Police (B.M.P.). Thereafter, the appellant was put under suspension along with another constable namely, Lakhelra Jamadar by Company Order No. 1638/99 as contained in Memo No. 2753 dated 05.11.1999 by the Commandant B.M.P-18, Both Gaya. The following four charges were levelled against him:-

“(1) That while the appellant was present along with other colleagues during night counting on 17.10.99 at Company Headquarter (B) Company Camp, Hilsa, Nalanda, after the counting was over and the police Inspector Jay Hasin Kandolna ordered to disperse, the appellant instigated the other Jawans not to disperse and demanded to call the Subedar. It has further been alleged that on query made by Company Commandant (Subedar) as to what was his problem, the appellant moved 5-6 steps forward and misbehaved.

(2) It has also been alleged that the appellant talked with Company Commandant in agitating mood and was asking about his leave.

(3) On 18.10.99 at about 6.15 P.M. when the appellant was ordered to join Vahini Headquarter on administrative grounds, he

refused to receive the command.

(4) When the appellant was given another command on 29.10.1999 at 10.30 A.M. to join Vahini Headquarter, he left the camp on his own on 30.10.1999 at 6:30 A.M. and proceeded to Vahini Headquarter voluntarily.

Thus, the action of appellant appears to be an act of indiscipline, dereliction towards duty and signifies that he is not an able Constable.”

Pursuant to the submission of explanation by the appellant, departmental proceeding was initiated and enquiry was conducted during which, witnesses were examined and thereafter enquiry report was submitted on 16.11.2001, holding the appellant guilty of the charges. The Commandant B.M.P.-11, Bodh Gaya, being the Disciplinary Authority, issued show cause notice to the appellant as to why he should not be dismissed from service. The appellant submitted show cause on 18.12.2001 and after considering the same, the Disciplinary Authority passed order contained in Memo No. 52 dated 05.01.2002, dismissing the appellant from service. Against the said order, the appellant preferred appeal before the Deputy Inspector General, Bihar Military Police, Central Range, Patna on 17.07.2002, which was also dismissed by order contained in Memo No. 1455 dated 05.09.2002. The memorial filed by the appellant before the Additional Director General, B.M.P., Bihar, too, was rejected by the Director General-cum-Inspector General of Police, Bihar, Patna by order contained in Memo No. 2162 dated

26.05.2005. The order dated 05.01.2002 was challenged by the appellant before this Court in C.W.J.C. No. 8604 of 2005 and dismissal of the writ petition by the learned Single Bench by order dated 03.05.2012 has given rise to the present appeal.

Learned counsel for the appellant submits that he was a delegate of Bihar Policemen Association and used to raise grievances/problems faced by his colleagues due to which the officers were biased against him. He submits that the appellant was not provided opportunity, either to produce defence witnesses or cross examine the witnesses produced on behalf of the prosecution and being a layman was not aware of the technicalities of a departmental proceeding. Learned counsel submits that the punishment of dismissal is disproportionate to the charges and, thus, the Court may direct for reconsideration of the same.

Learned counsel for the State submits that the appellant in his 12 years of service had been awarded five major and five minor punishments and, thus, in the aforesaid background the continuance of the appellant in service, and that too in the police force, where an act of indiscipline is a threat to the general morale and discipline of the forces, the dismissal of the appellant is just and proper. He submits that the appellant was provided with ample opportunity to produce defence witnesses and to cross examine the witnesses produced in



support of the charges, which would be clear from the various office orders dated 09.07.2001, 03.08.2001, 16.08.2001 and 03.09.2001, asking the appellant to produce the defence witnesses and cross examine the departmental witnesses, but he chose not to appear before the Conducting Officer, either in cross examination or to produce any defence witness. It is submitted that he was finally asked to appear and produce defence witness by letter dated 01.10.2001 fixing 10.10.2001, and when he appeared, but did not produce any defence witness. He further submits that the plea of being unaware of the technicalities of the departmental proceeding also is not tenable since the appellant never made any request to the Conducting Officer for being provided assistance of any other person for cross examining the departmental witnesses.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find any merit in the present appeal. In the police force, indiscipline of any sort cannot be tolerated. In the present case, the appellant not only acted in a manner which was nothing short of misconduct, as he was not only instigating others by leading them, had, in front of others also talked to the Commandant in an aggressive manner. Under judicial review, the Court is required to see whether there has been any procedural irregularity which may vitiate the decision making

process or the order of punishment is so disproportionate to the alleged misconduct that it shocks the conscious of the Court. In the present case, we do not find any procedural irregularity either in the conduct of the enquiry or the final order being passed by the Disciplinary Authority. Moreover, the quantum of punishment is the domain of the Disciplinary Authority and in the present case we do not find it to be shockingly disproportionate so as to warrant interference.

For the reasons aforesaid, the Letters Patent Appeal, stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

P. Kumar

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