

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.484 of 2015

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Surendra Paswan, Son of Sri Ram Saran Paswan, Resident of Village-Belamohan
P.O.-Sude Ratalli, P.S.-Fulparas, District-Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The D.G. cum I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police, Purnia range, Purnia.
4. The S.P., Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
Ms. Maruti Kumari, Advocate

For the Respondent/s : Mr. Anil Kumar Singh, GA-1
Mr. Kumar Ravish, AC to GA-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-09-2016

Heard Mr. Ram Hriday Prasad, learned counsel appearing for
the petitioner and Mr. Kumar Ravish, learned Assisting Counsel to
Government Advocate No.1 for the State.

With the consent of the parties this writ petition has been
head with a view to its final disposal at this stage itself.

The petitioner is aggrieved by the order bearing Memo
No.4857 dated 31.12.2009 of the Superintendent of Police, Katihar
whereby he has been dismissed from service and his pay and allowance
for the suspension period has been restricted to the subsistence
allowance. The order of the Disciplinary Authority impugned at
Annexure-5 is confirmed by the Appellate Authority i.e. the Deputy
Inspector General of Police, Purnea Range, Purnea who vide his order

bearing Memo No.749 dated 3.6.2010 has dismissed the appeal vide Annexure-6 and even the memorial has been rejected by the Director General of Police vide order bearing Memo No.380 dated 1.2.2012 impugned at Annexure-7.

The charge-sheet is at Annexure-1 and charges the petitioner of demanding money from a tractor driver which not only led to an altercation in between the tractor driver and the petitioner but resultantly a mob attacked the police barracks where again physical assault took place and could be controlled only when the petitioner resorted to air firing from his carbine. Although the enquiry report is neither enclosed by the petitioner nor is a part of the counter affidavit of the State but the records of the proceedings have been produced by Mr. Ravish, learned Assisting Counsel to Government Advocate No.1 and the enquiry report dated 31.10.2009 is found at page 23 of the proceedings.

The Department led three witnesses, namely, Constable No.750 Chandan Kumar, who has merely proved the issuance of a preliminary enquiry report dated 19.7.2008 which is marked Exhibit-1, Constable No.583 Jitendra Kumar who proved the suspension order dated 23.7.2008 issued from the office of the Superintendent of Police which is marked Exhibit-2 and the Reserve Sub-Inspector of Police, Yusuf Rakshit who again has merely proved the suspension order and the signature thereon. No other witness was examined by the department to drive home the allegation against the petitioner. The petitioner has been charged of not leading any evidence in his defence except himself. The

Enquiry Officer on the basis of the evidence on record has upheld the charges.

A show cause was issued to the petitioner as against the enquiry report and which was duly responded to by the petitioner vide Annexure-4 which has been received in the office of the Disciplinary Authority on 17.12.2009 as manifest from the remarks present in the show cause reply and which is followed by the impugned order of punishment passed by the Disciplinary Authority –cum- Superintendent of Police, Katihar impugned at Annexure-5 imposing a punishment of dismissal as well as of restricting the pay and allowances to the subsistence allowance drawn during the suspension period.

While passing the order of dismissal an error of record has been committed by the Disciplinary Authority in observing that the petitioner has not responded to the second show cause even when a copy of the same together with receiving, is present at Annexure-4. The order of the Disciplinary Authority is affirmed by the Appellate Authority as well as the Director General of Police vide orders present at Annexures 6 and 7 respectively. The petitioner feeling aggrieved is before this Court.

It is argued by Mr. Prasad, learned counsel appearing for the petitioner that an extreme penalty of dismissal is imposed for a mere altercation and even though a charge of demand of money was made against the petitioner but neither there is any evidence in this regard nor the enquiry report supports the charge. He further submits that the mechanical application of mind by the Disciplinary Authority is manifest

from the fact that even when the petitioner has filed reply against the proposed penalty vide Annexure-4 yet he passes the order of dismissal without verification of the factual position holding that no reply was filed by the petitioner to the show cause.

The argument is contested by Mr. Ravish who submits that the charge against the petitioner was serious and it is due to the illegal act of the petitioner which led to a mob attack. He submits that the order of dismissal has been passed taking note of the seriousness of the charge, which does not require any interference. Mr. Ravish however admits on verification of the records, that the representation of the petitioner against show cause, is present at page 40 of the proceeding and to that extent there is an error of record committed by the Disciplinary Authority.

I have heard learned counsel for the parties and I have perused the records.

The charge is three-fold i.e.

- (a) Unjust demand of money;
- (b) Assault on the tractor driver; and
- (c) A retaliatory action by the mob for illegal acts committed by the petitioner.

It is rather surprising that even where the tractor driver is at the centre of the altercation yet the department has not bothered to examine him so as to confirm the position. It is even more surprising that even when the preliminary report on record admits to the unruly conduct



of the mob, the attack by the mob is being connected with the alleged altercation between the petitioner and the tractor driver with no evidence either oral or documentary to connect the two occurrences. In my opinion the charge is presumptuous because none of the villagers have been examined in the disciplinary proceeding. The situation is that no evidence either documentary or oral was led during the disciplinary proceeding to confirm the reasons for the altercation with the tractor driver as well as the assault, if any, made by the petitioner and whether it was in defence of himself. Again in absence of evidence of any of the villagers in the disciplinary proceeding, it would be an absurdity to connect the mob attack with the altercation which took place in the early afternoon.

The only evidence that has been led by the department, are witnesses to the suspension order and the preliminary enquiry report and even when the preliminary report prepared by the Deputy Superintendent of Police (Headquarter) dated 19.7.2008 is sought to be proved by the department they did not choose to examine the Deputy Superintendent of Police to confirm his report.

The altercation is not in dispute and in absence of the examination of the tractor driver, the reason is not known. It is also not established whether the petitioner was guilty of attack or it was a retaliatory action by the petitioner on the abuse by the tractor driver.

In the circumstances and in absence of any evidence on record to bring the altercation within the confines of a misconduct and



whether the action of the petitioner to restrain the tractor driver, was during the course of duty or was a misconduct personified, the finding recorded by the disciplinary authority on a half baked enquiry and in absence of supporting evidence, can only be held a perversity. The statement of the tractor driver is present at Annexure-3 and he makes no charge of demand of money except that the petitioner assaulted him. There is a complete non-application of mind by the Disciplinary Authority on the issue whether in the circumstances existing and in absence of evidence on demand of money and in absence of evidence to reject the explanation given by the petitioner for the altercation, as well as in absence of evidence to prove that the mob attack was a result of altercation between the petitioner and tractor driver, the act constituted a misconduct.

Although Mr. Ravish has though tried to raise objection on the statement of the tractor driver by submitting that the same was never led during the disciplinary proceeding but in my opinion it was for the department to drive home the charges on the point of assault by the petitioner and the demand of money and in absence of examination of the tractor driver, these two aspects remain unsatisfied in the present proceeding.

In sum and substance the conclusion drawn is based on no evidence.

For the reasons aforementioned the punishment order dated 31.12.2009 impugned at Annexure- 5 as affirmed by the superior

authorities vide orders dated 3.6.2010 and 1.2.2012 impugned at Annexures- 6 and 7 respectively cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner stands reinstated to his post with 50% back wages.

Let the records so produced by Mr. Kumar Ravish, learned Assisting Counsel to Government Advocate No.1 be returned to him.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-10-2016
Transmission Date	NA