

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.616 of 2013

=====

1. Naresh Das Son of Late Dhathuri Das Resident of Harijan Tola, Faridpur, P.S.-
Jamalpur, District- Munger

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Prison) Department,
Government of Bihar, Patna
2. The Inspector General of Prison, Bihar, Patna
3. The Superintendent, Adarsh Central Jail, Beur, Patna
4. The Superintendent, Sub Jail, Hilsa, Nalanda

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv.

For the Respondent/s : Mr. Kumar Ravish, A.C. to G.A.1

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-08-2016

Heard Mr. Durga Nand Jha, learned counsel for the petitioner
and Mr. Kumar Ravish, A.C. to G.A.1 for the State.

The petitioner is aggrieved by the order dated 1.10.2009 of the
Inspector General of Prisons, Bihar, Patna whereby a penalty of
removal from service has been passed and which order has been
affirmed by the appellate authority i.e. the Home Secretary,
Government of Bihar, Patna in his order dated 15.6.2010. Copies of
the orders are impugned at Annexures- 6 and 9 respectively.

Facts of the case in brief is that the petitioner was posted as a
Warden in the Camp Jail at Phulwarisharif. On account of his alleged
indisciplined conduct, he was transferred from the Camp Jail,
Phulwarisharif to the Adarsh Central Jail, Beur at Patna vide order



bearing No. 9 dated 14.6.2008. A report was called for as regarding his misconduct from the Phulwarisharif Camp Jail and on being received, the petitioner was suspended vide order bearing No.4314 dated 24.7.2008. A show cause was served upon the petitioner vide Memo No. 4948 dated 2.8.2008 on 14 counts placed at Annexure-1, requiring an answer within a week. The petitioner sought leave on 4.8.2008 but did not return. Since the petitioner did not choose to file his reply to the show cause, that a chargesheet was drawn and served on the petitioner listing 9 charges, a copy of which is placed at Annexure-2. The Enquiry Officer and Presenting Officer were appointed vide order bearing Memo No. 6282 dated 26.12.2008. The petitioner filed his reply denying the allegations on 9.1.2009 but which was a response to the show cause and not a response to the chargesheet. A copy of the same is present at Annexure-3. The Enquiry Officer held the enquiry and submitted his report upholding the charges, a copy of which is present at Annexure-5. The Director, Administration vide his letter bearing No.1478 dated 27.4.2009 served a copy of the enquiry report on the petitioner seeking his reply which again forms part of Annexure-5 at page 27 of the proceedings. The petitioner while explaining the reasons for not reporting for duty, has denied the allegations of threatening the Hawaldar Prem Kumar Dubey in an intoxicated state. The Inspector General of Prison acting



as a disciplinary authority has in consideration of the enquiry report, the reply of the petitioner and the materials on record, concurred with the finding of the Enquiry Officer and ordered for removal of the petitioner vide order bearing Memo No.3797 dated 1.10.2009 and which order has been affirmed by the Home Secretary vide order bearing No.2530 dated 15.6.2010.

Although learned counsel for the contesting parties have addressed this Court on the merits of the case but in my opinion this writ petition is fit to be allowed on a limited point and for which I need not delve into the merits of the case for the present.

The order of the disciplinary authority was earlier questioned by the petitioner in C.W.J.C.No.17814 of 2009 inter alia on grounds that while the Superintendent of Central Jail is the disciplinary authority and competent to pass an order of punishment, this power has been arrogated to himself by the Inspector General of Prisons who is the appellate authority.

The contentions advanced were contested by the learned State counsel with reference to Rule 59 of the Jail Manual and to submit that the Inspector General of Prison was made the disciplinary authority to pass orders and the appeal against which, would lie before the Commissioner. This Court disposed of the writ petition with direction to the petitioner to take recourse to the remedy of statutory

appeal and in the penultimate paragraph of the order it is observed that the court has not gone into the merits which shall be open for consideration in its entirety on all aspects, in the proposed appeal.

While it is the argument of Mr. Jha learned counsel for the petitioner that the order impugned is based on no evidence, it is the argument of Mr. Kumar Ravish learned State counsel that the evidence does find mention in the chargesheet itself but neither the petitioner chose to respond thereto or chose to contest the documents nor did he seek an examination of oral or documentary evidence.

As I have already observed, I need not go into merits of the contest at the present stage. The enquiry report upon being submitted, the second show cause was served on the petitioner by the Director, Administration vide Memo No. 1478 dated 29.4.2009 asking the petitioner to respond to the findings of the Enquiry Officer failing which penal orders would be passed. Though the show cause was served by the Director, Administration and the petitioner filed his reply before him but the order of penalty is passed by the Inspector General of Prisons. The order passed by the Inspector General of Prisons impugned at Annexure-6 cannot be upheld on grounds that though final orders of penalty has been passed by him but the show cause against penalty proposed, was issued by a different authority. A strange procedure unknown to service jurisprudence is adopted in the

present case where the authority giving opportunity to a delinquent to represent against the enquiry report as well as on the proposed penalty is not the person passing final order thereon and on the other hand the disciplinary authority i.e. the Inspector General of Prisons gives no such opportunity to the delinquent. This is impermissible in law and is contrary to the legal position so settled.

For the reasons so discussed, the order vide memo No.3797 dated 1.10.2009 passed by the Inspector General of Prison, Patna impugned at Annexure-6 together with the order bearing Memo No.2530 dated 15.6.2010 of the Home Secretary impugned at Annexure-9 cannot be upheld and are accordingly set aside. The matter is remitted back to the disciplinary authority for proceeding in the matter afresh from the stage of service of the enquiry report and for disposal of the proceeding in accordance with law.

The writ petition is allowed.

The records produced by Mr. Kumar Ravish, learned State counsel is returned to him.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	17.9.16
Transmission Date	