

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24549 of 2013

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1. Kanhaiya Samrat Son of Late Brij Vilash Singh Resident of Village and P.O.-
Godhiari, P.S.- Vishanpur, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Inspector General of Police, Patna Region, Patna
3. The Deputy Inspector General of Police, Central Region, Patna
4. The Senior Superintendent of Police, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Adv.

For the Respondent/s : Mr. Nirbhay K.Singh, G.P.26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-07-2016

Heard Mr. Shekhar Singh, learned counsel for the petitioner and
learned counsel for the State.

The petitioner is aggrieved by order bearing Memo No.70 dated
14.3.2013 passed by the Deputy Inspector General of Police, Central
Range, Patna impugned at Annexure-6 whereby he has upheld the
order of penalty passed by the Senior Superintendent of Police, Patna
bearing Memo No.10328 dated 14.7.2012 impugned at Annexure-4
whereunder the petitioner was imposed a penalty of withholding of
two increments with non cumulative effect which is equivalent to 3
black marks.

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



The only issue that has been raised by Mr. Singh learned counsel for the petitioner to question the impugned orders is that it is for an allegation which does not find mention in the charge memo present at Annexure-2. It is also argued that the copy of the enquiry report was never served on the petitioner before the order of penalty, although he fairly accepts that a copy thereof has been obtained by him subsequently.

The allegation against the petitioner and one other constable namely, Kundan Kumar is that they on the identification and cooperation of some person, caught hold of three alleged criminals namely, Akhilesh Kumar, Sonu Verma and Chandan Kumar from the Rajendra Nagar Terminal, brought them to a mango orchard falling under Gopalpur Police Station and where they assaulted these persons and demanded a sum of Rs. 20,000/- each for their release. On hearing the commotion the local villagers surrounded them. In between, the local police also arrived and took all of them in custody leading to the institution of Gopalpur Police Station Case No. 22 of 2010 on 28.3.2010 and the policemen were suspended. The allegations referred to above also led to initiation of a departmental proceedings and considering the misconduct on the part of the constables that the petitioner was imposed the penalty in question vide Annexure-4. An appeal against the order was dismissed vide Annexure-6. The

petitioner being aggrieved is before this Court.

As I have stated above, the challenge to the impugned order of penalty is that it is for a charge which does not find mention in the charge memo and that the copy of the enquiry report was not supplied. In so far as supply of enquiry report is concerned, the very fact that the procedure provided for penalty of stoppage of increments with non cumulative effect under rule 828(c) of the Bihar Police Manual does not mandate a formal enquiry rather requires the order to be passed in consideration of the explanation to the show cause submitted by the petitioner, a copy of which is present at Annexure-3, the objection is only taken to be rejected.

Coming to the second issue raised by Mr. Singh regarding the order of penalty resting upon a charge memo which does not find mention in the charge present at Annexure-2, it is seen from the charge memo that the magazine carried by the petitioner was having only 7 bullets and which according to the Enquiry Officer as well as the Disciplinary Authority was short in number. The explanation of the petitioner in the backdrop of charges was examined by the Superintendent of Police and a perusal of the order imposing penalty reflects that the opinion is not only resting on the charge that the petitioner went to the spot with less number of bullets rather it is taking into consideration that entire facts of the matter. It is rightly

pointed out by learned counsel for the State in reference to the show cause reply filed by the petitioner present at Annexure-3 that the petitioner himself has admitted to visit the spot along with the other constable. In my opinion, the Senior Superintendent of Police has taken note of the entire circumstances in which the petitioner was taken into custody and brought to the police station and even if it is argued by Mr. Shekhar Singh that the police case instituted has resulted in submission of final form which was accepted by the Magistrate, it yet does not exonerate the petitioner of the misconduct which is the foundation for the departmental proceedings for law is well settled and an acquittal in a criminal case simpliciter on its own would not be sufficient ground to discharge the petitioner in a departmental proceedings which has to be taken to its conclusion on the basis of the materials on record. The orders impugned are in consideration of totality of the circumstances and the conduct of the petitioner.

For the reasons aforementioned, I am not persuaded to interfere with the orders impugned.

The writ petition is dismissed.

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	12-8-16
Transmission Date	

(Jyoti Saran, J)