

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2806 of 2014

Virendra Yadav, Son of Late Ram Sarida Yadav, Resident of Gram-Gopalpur, P.S.-
Sahpur, District- Bhojpur (Arrah).

.... Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Bihar, Patna.
2. Deputy Inspector General of Police, State Crime Records Bureau, Bihar, Patna.
3. Superintendent of Police, State Crime Records Bureau, Bihar, Patna.
4. Deputy Superintendent of Police, State Crime Records Bureau, Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava
For the Respondent/s : Mr. R.N.Prasad, SC-9
For the State : Mr. Prashant Kumar, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-09-2016

Heard Mr. Abhinav Srivastava, learned counsel
appearing for the petitioner and Mr. Prashant Kumar, learned A.C.
to S.C.-11, for the State.

With the consent of the parties the matter has been taken
up for consideration with a view to its final disposal at the stage of
admission itself.

The petitioner is an Ex-Constable from the State Police
Force and is aggrieved by the order bearing Memo No.4520 dated
3.10.2013 passed by the Director General of Police whereby he has
been dismissed from service.

Facts of the case briefly stated is that the petitioner was
appointed as a Constable on 6.7.1999 in the State Police Force. A
charge touching on moral turpitude being made against the



petitioner by one Ms. Alpana Shahi, put the petitioner under suspension vide order dated 1.9.2011 placed at Annexure-1. The charges were framed against the petitioner on 13.9.2011 vide Annexure-2. The petitioner submitted his explanation on 16.9.2011 present at Annexure-3 to the charges so leveled. An enquiry report was submitted though not handed over to the petitioner. The disciplinary authority that is the Superintendent of Police, State Crime Records Bureau, Bihar, Patna in consideration of the enquiry report exonerated the petitioner of the charges and dropped the proceedings vide order dated 9.7.2012 placed at Annexure-9. Though no appeal was filed by the complainant, the issue was taken up by the Additional Director General of Police –cum- Chairman, Central Recruitment Board and who recommended for review of the order dropping proceeding passed by the Superintendent of Police vide his letter dated 27.12.2012 placed at Annexure-10. A show cause was next served on the petitioner enclosing a copy of the enquiry report asking him to respond to the enhancement of punishment issued from the office of the Director General of Police under the signature of the Assistant to the Inspector General bearing Memo No.2108 dated 10.5.2013. Since neither the enquiry report nor the order of the disciplinary authority had earlier been served on the petitioner and the show cause was against enhancement of punishment, hence the petitioner requested for a copy of the order



of punishment passed by the disciplinary authority vide Annexure-13 and 14 but was not supplied with. The petitioner thereafter invoked the Right to Information Act, 2005 and when the copy of the order passed by the disciplinary authority, dropping the charges leveled against the petitioner, was supplied to him. The petitioner thereafter filed an exhaustive reply to the show cause present at Annexure-17. The Director General of Police vide his impugned order bearing Memo No.4520 dated 3.10.2013 has upheld the charge and has proceeded to order for dismissal of the petitioner. Feeling aggrieved the petitioner is before this Court.

The arguments advanced by Mr. Srivastava, learned counsel appearing for the petitioner is primarily directed towards the decision making process which according to him is infracted. Mr. Srivastava in reference to the opinion of the Supreme Court expressed in the case of **Punjab National Bank and others vs. Kunj Bihari Mishra** since reported in **AIR 1998 SC 2713** has submitted that just in a case where the disciplinary authority chooses to differ with the finding of an enquiry officer exonerating a delinquent from the charges, that he is put under obligation to serve his tentative reasons for such disagreement on the delinquent with reasonable opportunity of representation, even in the present case the Director General of Police, if not satisfied, ought to have expressed his reasons for disagreeing with the opinion of the

disciplinary authority which is apparently missing.

The second argument advanced by learned counsel for the petitioner is that even though the disciplinary authority has dropped the proceeding against the petitioner yet the show cause is against enhancement of penalty when there is none. He thus submits that such order which is founded on an illegal show cause, cannot be upheld.

The third argument raised by Mr. Shrivastava is that though the petitioner was not aware of the findings of the disciplinary authority which proceeded to exonerate him on 9.7.2012 and the Additional Director General has recommended a review on 27.12.2012 but the Deputy Inspector General vide his order dated 14.3.2013 present at Annexure-11 has certified him of bearing a good administrative character and has revoked his suspension.

Mr. Srivastava has next referred to the provision underlying Rule 853A(a) of the Bihar Police Manual to submit that though the Inspector General is amply empowered to call for any file in any case even though no appeal lies and has also been empowered to pass appropriate orders thereon and in the present case the Director General of Police exercising such powers has proceeded to pass such orders but the foundation for such exercise is missing. Mr. Srivastava has with reference to the

recommendation of the Deputy Inspector General dated 27.12.2012 submits that the said recommendation is without any opinion as to the infirmity in the order of the disciplinary authority. Learned counsel has also questioned the impugned order of dismissal as being mechanical, based on no evidence and not accompanied with reasons.

The arguments of Mr. Srivastava has been contested by Mr. Prashant Kumar, learned State Counsel who submits that it is in view of the gravity of the charge leveled against the petitioner which has led to a review of the matter by the Director General of Police on such recommendation made by the Additional Director General and which has resulted in the impugned order requiring no interference. Again referring to the power vested in the Director General of Police under Rule 853(a) of Bihar Police Manual it is submitted that no procedural infirmity can be found in the exercise. The short argument advanced by Mr. Prashant Kumar to defend the impugned order is that the Director General of Police is vested with review powers and the gravity of the charge leveled against the petitioner in the disciplinary proceedings was such that it has invited a dismissal in the opinion of the Director General of Police and which opinion stands justified by the circumstances governing the case.

I have heard learned counsel for the parties and I have

perused the records.

The case in hand is one of its own kind. A disciplinary proceeding initiated against the petitioner has resulted in an order of exoneration from the charges and dropping of the proceedings under the order of the Superintendent of Police as the disciplinary authority present at Annexure-9. The order of the disciplinary authority runs in no less than eight pages discussing each aspect of the matter as well as the law governing. No doubt the charges are serious but in the opinion of the disciplinary authority it was based on suspicion.

In the nature of the order which this Court proposes to pass for the present, I would not be required to delve into the merits or demerits of the conclusion. Suffice it to say that the disciplinary proceedings was dropped and there is no appeal by the complainant against the order dropping the proceedings. On the contrary it is the Additional Director of Police who vide his recommendation dated 27.12.2012 has requested the Director General of Police to exercise the power of review of the order passed by the disciplinary authority. As rightly submitted by Mr. Srivastava, there is not even a whisper as to the infirmity present in the order of the disciplinary authority.

Be that as it may, the recommendation was acted upon and resulted in the issuance of a show cause under the signature of



the Assistant to the Inspector General of Police issued from the office of the Director General of Police bearing Memo No.2108 dated 10.5.2013. The show cause is peculiar for it is against enhancement of punishment. Now even when the proceeding has been dropped exonerating the petitioner yet a show cause against enhancement is a reflection of a mechanical application. Even more surprising is that though the proceedings have been dropped yet the show cause is being issued for responding to the enquiry report submitted by the enquiry officer.

In my opinion this is a serious infirmity in the proceeding so initiated by the Director General of Police for once an enquiry report is submitted and in consideration whereof, the disciplinary authority proceeds to drop the charges then the enquiry report merges in the order of the disciplinary authority. In case thereafter the Reviewing Authority decides to yet proceed against the delinquent then he has to be noticed on the order of the disciplinary authority by indicating his tentative reasons of difference with the conclusion drawn by the disciplinary authority and not on the Enquiry Officer's report.

May be and may be not, the opinion of the disciplinary authority, is based on sound reasons and on materials on record but then there is nothing either in the recommendation of the Additional Director General of Police present at Annexure-10 or in the show



cause dated 10.5.2013 present at Annexure-12 or in the final order passed by the Director General of Police dated 3.10.2013 impugned at Annexure-18 which would confirm any infirmity in the conclusion recorded by the disciplinary authority. The Director General of Police has rather strangely ignored the findings of the Disciplinary Authority and has instead proceeded to uphold the charges simply on the findings in the enquiry report.

No doubt rule 853A(a) of the Police Manual vests jurisdiction in the Director General of Police to exercise *suo motu* powers of review of an order passed in a disciplinary proceedings, even if no appeal is preferred or if there is a recommendation in this regard by an officer in the rank of the Additional Director General of Police but then there are certain pre-requisites for such exercise which requires to be satisfied and which has been given a complete go bye. The first step towards such exercise especially in a case where the proceeding has been dropped or where the Director General of Police intends to enhance the punishment is, that the Director General of Police or the authority concerned would have to express his tentative reasons for disagreement with the finding of the disciplinary authority, to enable the delinquent to respond thereto, in a purposeful manner but no such exercise was undertaken.

The second aspect of the matter is that even though the

show cause is against enhancement of punishment but here there is no punishment order. The whole proceedings culminating in the dismissal order is thus without application of mind.

The third infirmity in the matter is that there is no show cause against dismissal.

The fourth infirmity in the proceeding is that there are two orders passed in the case of the petitioner because even when the Director General of Police proceeds to order dismissal, he doesn't bother to set aside the order of the disciplinary authority.

The infirmities in the proceedings listed above are sufficient indication of the mechanical manner in which the proceedings have progressed. There is a complete non application of mind by the authorities. Besides the serious infirmity in the decision making process as discussed above even the order of the Director General of Police is mechanical in character. In fact, except for relying upon the findings of the enquiry report and the gravity of the charge discussed therein, the Director General of Police has neither assigned reasons nor discussed the materials for concurring with finding of the Enquiry Officer nor has he given reasons for rejecting the reasons assigned by the Superintendent of Police to drop the proceedings. The order impugned also does not bother to discuss the explanation given by the petitioner against the show cause.

For the reasons and discussions above the impugned order dated 3.10.2013 passed by the Director General of Police cannot be upheld and is accordingly set aside. The petitioner is reinstated with 50% back wages.

The writ petition is allowed.

This order however would not preclude the Director General of Police to proceed afresh in the matter but in accordance with law.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	4.10.2016
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