

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6606 of 2015

=====

Shiv Kumar Singh, Son of Late Radhe Krishna Singh, resident of village- Harpur
Belwa, P.S.- Mahua, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Prison and Reforms Service Institution, Home Department, Government of Bihar.
3. The Inspector General, Prison and Reforms Service Institution, Bihar, Patna.
4. The D.I.G., Prison, Bihar, Patna.
5. The Jail Superintendent, Ideal Central Jail, Beur, Patna.
6. The Superintendent, Divisional Jail, Begusarai.
7. The Additional Secretary-cum-Director Administration Bihar, Patna.

.... Respondents.

=====

Appearance :

For the Petition : Mr. Ram Hriday Prasad, Advocate
Ms. Maruti Kumari, Advocate
For the Respondents : Mr. Ravi Bhardwaj, AC to GA-5

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 17-03-2016

1. The petitioner was Jail Warden at Begusarai Prison. He was dismissed from service vide order dated 04.08.2014 passed by the I.G., Prison and Reforms Service Institution, Home Department, Govt. of Bihar. In light of the order dated 04.08.2014, the Superintendent, Divisional Jail, Begusarai, issued formal order discharging him from service. Petitioner filed an appeal before the Principal Secretary, Home (Prison) Department, which too was rejected vide order dated 04.03.2015, which is contained in Annexure-23. All these three orders are impugned in this writ

application.

2. The facts relevant for disposal of the case is that in the year 2005, the petitioner was posted as Jail Warden in Sub-Jail, Barh. His duty was at the jail gate. On 18.03.2000 eight prisoners escaped from the Jail campus. The petitioner was suspended on 18.03.2000 and was departmentally proceeded for the said offence. Two charges were framed against him. In nutshell, charge was that in dereliction of his duty, he permitted eight prisoners in the jail without proper permission (visiting papers) and thus aided their escape. On completion of the inquiry, the conducting officer exonerated him of guilt. The disciplinary authority directed a fresh inquiry. In the fresh inquiry, the petitioner was found guilty of the charge and was issued 2nd show-cause. The petitioner filed his reply refuting the findings recorded in the departmental inquiry. Being not satisfied with the explanation offered by the petitioner, the disciplinary authority awarded the punishment of putting him to the lowest scale of pay of warden.

3. The petitioner filed an appeal before the Principal Secretary, Home (Prison) Department, which was rejected on 14.10.2011.

4. Being aggrieved, the petitioner filed C.W.J.C. No. 4704 of 2012. This Court observed that order, dated 31.07.2009 of



disciplinary authority directing for a fresh inquiry, did not mention any infirmity in the proceeding to justify any fresh inquiry. Learned Single Judge quashed the order dated 31.07.2009 by which a fresh inquiry was ordered and also quashed the consequential punishment vide his order, dated 05.04.2012.

5. It appears that the disciplinary authority this time considered the first inquiry report and gave reasons for differing with the findings of the conducting officer and issued notice to the petitioner for his response. The petitioner assailed the impugned notice in C.W.J.C. No. 6347 of 2013. The petitioner submitted that the impugned notice is in complete defiance of the direction given by this Court in the order dated 05.04.2012 passed in C.W.J.C. No. 4704 of 2012. The petitioner submitted that when this Court held that order directing a fresh inquiry, dated 31.07.2009 against him was itself unsustainable, the respondents had no liberty to proceed against him. The learned Single Judge rejected the plea of the petitioner holding that this Court has not stopped the disciplinary authority from issuing a fresh show-cause. Learned Single Judge further held that no infirmity has been found in the 2nd show-cause notice as reasons were given for differing with the views expressed in the first inquiry report. In view of the order of the learned Single Judge, dated 16.04.2013, passed in C.W.J.C. No. 6347 of 2013, the inquiry

proceeded and the petitioner was awarded punishment of dismissal from service.

6. Learned counsel has assailed the proceedings on a number of grounds. He submits that at the relevant time one Kapildeo Prasad was posted at the outer gate of the jail and the petitioner was posted at the inner gate. The visitors used to meet the prisoners between the two gates. On 18.03.2000, two persons having two slips came at the jail. Seeing the two slips, having issued by the Jail Superintendent, prisoners were called by the righter of the jail. Two prisoners including Pahar Singh came at the gate. Pahar Singh put pistol on the petitioner and forcibly took away the key of the inner lock of the gate and opened the same. The other co-warden namely, Kapildeo Prasad, who was incharge of the outer gate, was nowhere present at his place of duty. Subsequently, the lock of the outer gate was also opened which facilitated the escape of the prisoners.

7. The petitioner has pointed a number of discrepancies in the proceedings, in para 27 of the writ application, which is quoted herein below for easy reference:-

“27. That charges against the petitioner are false, the petitioner is innocent. Order of dismissal passed by I.G., Prison and Reforms Institution, Bihar, Patna (Annexur-19) conveyed by Superintendent, Divisional Jail, Begusarai (Annexure-20) and order of Principal Secretary, Prison and Reforms Service Institution (Annexure-23) are fit to be set aside on the

following grounds:-

I. On 18.03.2000 the petitioner was on duty in the sub-jail Barh having key of the inner lock of the gate. Warden Kapildeo Prasad was on duty at outside jail gate having key of the outer lock of the gate.

Two persons having two slips issued by the Jail Superintendent came at the jail gate. Seeing the slip issued by the Jail Superintendent, prisoners were called by the righter of the jail. Two prisoners including Pahar Singh came at the gate.

Pahar Singh put pistol on the petitioner and forcibly took away the key of the inner lock of the gate from the petitioner. He opened the inner lock of the gate and at that time outer lock of the gate was opened and Kapildeo Prasad, Incharge of outer lock of the gate was not present on his duty. After opening the inner lock Pahar Singh and 7 other prisoners fled away from jail.

II. Kapildeo Prasad, who was on duty of side in the jail was not present there. He had fled away by opening the outer lock of the gate. The outer lock of the jail was open hence, Pahar Singh and seven other prisoners succeeded fleeing away snatching the key of the inner lock from the petitioner on the point of pistol. If gate had been locked from the outside, then the prisoners could not have fled away. It was impossible to take the key of the outer lock from Kapildeo Prasad from the prison who was inside the jail.

III. Immediately after the occurrence the petitioner rang the jail alarm inspite of that none came there.

IV. The Dy. Jail Superintendent reported the matter to officer in-charge, Barh Police Station on 18.03.2000. The said report shows that Kapildeo Prasad was not present on his duty. The prisoners forcibly took the key of inner jail gate from the petitioner on the point of pistol. On the said report Barh P.S. Case No. 89 of 2000 was registered.

V. Enquiry was conducted in accordance with law and after due enquiry Superintendent, Sub Jail, Hilsa submitted a detailed report (Annexure-2) with recommendation to exonerate the petitioner from all charges. The enquiry officer also recommended for waiting the decision of the court in Barh P.S. Case No. 89/2000.

VI. From the enquiry report (Annexure-2) it appears that the occurrence caused due to administrative latches in jail administration and negligence of Kapildeo Prasad. There was no any fault on the part of the petitioner. The petitioner was discharging his duty as per direction of the jail administration.

VII. Joint Secretary-cum-Director Administration issued show-cause notice for awarding major punishment without assigning any substantial ground differing from the 1st enquiry report.

VIII. Order of dismissal is hard and disproportionate to the offence.

IX. Orders under challenge are arbitrary and malafide.”

8. The petitioner submits that if the gate had been locked from the outside, the prisoners would have no room for escaping. It was impossible for the prisoners to take the key of the outer lock from Kapildeo Prasad, whose duty was outside the outer gate of the jail. Furthermore, Kapildeo Prasad has been let off and has not been dismissed from service though he was more responsible for the escape of the prisoners.

9. Learned counsel for the State has justified the actions taken against the petitioner. He submits the due to callousness of

petitioner, eight prisoners escaped from jail campus. Besides this, the stand of the petitioner in his defence is not consistent.

10. Heard counsel for the parties.

11. Main submission of the petitioner is that there is no cogent material to hold him guilty. The disciplinary authority overlooked vital aspect of the case that it was Kapildeo Prasad who was stationed at the outer gate and had its key. Had he kept the outer gate locked, no person would have escaped. He could not be responsible, if the outer gate was opened, which facilitated escape of the prisoners. He opened the inner gate, as two persons came having two slips issued by the Jail Superintendent. He was taken aback when one of the two prisoners struck him on the head and forcibly opened the inner gate on account of which six more prisoners came under and made good their escape.

12. The scope of judicial review in the matter of disciplinary proceeding is limited to review of procedure and error of law and the court would not go into sufficiency or otherwise of the material on which the disciplinary authority had recorded its findings. As such, this court is unable to review the order holding the petitioner guilty of the charges.

13. The petitioner had alternatively argued that after completion of the inquiry, the 1st inquiry officer exonerated him from the charges.

14. In the facts and circumstances of the case, the punishment of dismissal is harsh and excessive. I find that, the disciplinary authority differing with the view of the inquiry officer punished and put him in the lowest scale of pay of a warden. Furthermore, Kapildeo Prasad, who was incharge of outer gate and posted there, has not been dismissed from service. It is equally true that if Kapildeo Prasad would have not kept the outer gate open, it is not possible for the prisoners to escape from the prison. The petitioner had also an unblemished career of 30 years of service

15. Situated thus, I would agree with the submission of the petitioner that punishment of dismissal is harsh. The impugned orders of punishment are set aside and the matter is remitted back to the disciplinary authority for awarding any other punishment other than dismissal from service.

16. The writ application is allowed to the extent mentioned above. It is expected that such decision on quantum of punishment would be taken within a period of three months from the date of receipt of a copy of this order.

(Samarendra Pratap Singh, J)

kunal/-

U			
---	--	--	--