

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7342 of 2014

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Mahafizur Rahman S/o Late Reyazur Rahman R/o Meherkunj Apartment, Flat No. 14, New Patliputra Colony, Road No. 3 P.S.Patliputra, P.O. - Patliputra, District - Patna. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police) , Govt. of Bihar, Patna.
 2. The Director General of Police, Bihar, Patna
 3. The Inspector General of Police, Patna, Bihar.
 4. The Deputy Inspector General of Police, Magadh Range, Gaya.
 5. The Senior Superintendent of Police, Gaya.
 6. The Superintendent of Police, Gaya Town. Respondents
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Appearance :

For the Petitioner : Mr. Santosh Kumar, Advocate
Mr. PK Jha and F.Ali.Ahmad, Advocates
For the Respondents : Mr. Sudhir Kr.Singh, AC to GA 4.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT
Date: 12-01-2016

The petitioner, who retired from the rank of Inspector of Police, seeks quashing of the order, dated 11.1.2012, passed by the Inspector General of Police, Bihar, Patna (respondent no.2) affirming order, dated 15.11.2010, passed in Enquiry Proceeding no. 12 of 2010, Gaya by the Deputy Inspector General, Magadh Division, whereby he has been inflicted major punishment of forfeiture of one increment equivalent to two black marks.

2. Before I consider the rival submissions of the parties, it would be necessary to notice the short facts of

the case in brief :-

3. The petitioner was appointed on 21.7.1980 as Sub Inspector of Police on the recommendation of the Bihar Service Commission. On 4.4.2004, he was promoted to the rank of the Inspector of Police, who was then posted as Police Inspector of Khijarsarai circle in Gaya township. On 27.4.2010, during call of Bharat Bandh, residents of village Khijarpur are said to have assaulted the students of the Engineering college on 27.4.2010 at about 7 AM, in presence of the petitioner. The petitioner was consequently sought explanations as to why he did not take preventive measures, when the students of the Engineering college were being beaten up by the locals, during the Bandh. He was also asked to explain, as to why he did not take action against accused persons of Khijarsarai Police station Case No. 86 and 87 of 2010. The petitioner in his explanations on 25.8.2010 to the Superintendent of Police, Gaya denied the allegations. In his explanation, petitioner submitted that as soon as he got



the informations of the incident from a Sub Inspector of Buniyadganj Police Station, he rushed to the place of incident with police party, namely, Upendra Kumar, Ramprit Paswsan and Md. Naushad, all constables, and took every possible steps to mitigate the situation. With respect to the other allegation, he stated that he had already supervised Khijarsarai Police station Case No. 86 and 87 of 2010 and a direction had been issued to the Officer-in-charge of the concerned Police Station, as well as the Investigation officer of the case, to take all coercive steps for arrest of the accused persons.

4. Not being satisfied with the explanation of the petitioner, a regular departmental proceeding was initiated for the aforesaid two charges. The petitioner submitted his reply denying the charges. The conducting officer on conclusion of enquiry, recorded a finding of guilt. On basis of the enquiry report, the disciplinary authority, namely, the Deputy Inspector General, Magadh Division, Gaya, awarded punishment of forfeiture of one increment

equivalent to two black marks. The petitioner filed an appeal before the I.G. Bihar, Patna (respondent no.2) which too was rejected on 11.1.2012.

5. The petitioner has assailed the impugned orders on quite a number of grounds. He submits that the departmental proceeding has been conducted in a most unreasonable manner. He was asked to submit his explanation without making available a copy of charge memo. The relevant documents too were not been supplied. Furthermore, major punishment has been awarded without providing him a copy of enquiry report and an opportunity to file his explanations with respect to the adverse findings recorded in the enquiry report.

6. In support of the submissions, he has relied upon Sub-paragraph 3 of paragraph 33 of the decision rendered in case of State Bank of Patiala and others Vs. SK Sharma, reported in (1996) 3 SCC 364 which is quoted herein below for easy reference:-

“(3) In the case of violation of a procedural provision, the



position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the



enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

7. A Counter affidavit and a supplementary counter affidavit have been filed by respondent no. 4 on 20.4.2014 and 18.12.2014, respectively, justifying the impugned actions. Learned counsel appearing for the State submits that the departmental proceeding was conducted in accordance with law and does not suffer from infirmity. The petitioner was given all requisite documents on 20.8.2010, which fact is noticed in order, dated 20.8.2010, of the Conducting officer. On 20.8.2010, the petitioner gave statement before the Conducting officer and prayed to



allow him time to submit his explanation on the next date. On 25.8.2010, the petitioner submitted his explanation before the Conducting office. The Conducting officer gave ample opportunity to him to defend his case. The Conducting officer forwarded his opinion on 24.8.2010 in accordance with proviso to Rule 828(c) of the Bihar Police Manual to Deputy Inspector General, Police, who after consideration of memo of charge, defence of the petitioner and evidence on record, and agreeing with the opinion of the Conducting officer, held the petitioner guilty of the charge and awarded the punishment of forfeiture of one increment equivalent to two black marks. An appeal filed against the order of punishment was too rejected by the I.G., Patna Zone, Patna.

8. I have heard learned counsel for the petitioner as well as learned counsel for the State and perused the materials on record, including a copy of the enquiry report which has been brought on record in the counter affidavit of the respondents. According to the respondents, the



delinquent was proceeded in accordance with provisions of the Bihar Police Manual, particularly Rule 828 (c) of the Bihar Police Manual. Furthermore, no formal enquiry is required in case, forfeiture of one increment, equivalent to two black marks, is proposed to be an adequate punishment. Thus learned counsel for the State contended that there is no requirement of furnishing a copy of enquiry report and seeking further response from the petitioner with respect to the findings recorded therein.

9. As the dispute centres around Rule 828 (c) of the Police Manual, the same is quoted herein below:-

Rule 828(c) of the Police Manual reads as follows:-

"In case in which forfeiture of increment is proposed to be an adequate punishment, this may be inflicted without formal enquiry in the form of a proceeding but every such matter shall state clearly: firstly, the charges against the defaulter; then his answers' to each charge, one by one; and lastly, the finding upon each charge of the officer inflicting the punishment. In such cases, the Superintendent need not hold the enquiry himself, nor shall the delinquent have the right to appear before him, but he has the right

to appear before the officer deputed to record the evidence and to take his defence; and such officer, who shall not be below the rank of Inspector, shall come to a clear finding on each charge and shall submit the record with his recommendations to the Superintendent for orders."

10. Rule 828(c) provides procedure for inflicting major punishment. From bare perusal of Rule 828(c), it is evident, that where punishment of forfeiture of increment is proposed to be an adequate punishment, no formal enquiry is required and to that extent, I would agree with the submission of the State. Nonetheless, the procedure requires that every such matter shall state clearly: firstly, the charges against the defaulter; then his answers' to each charge, one by one; and lastly, the finding upon each charge of the officer inflicting the punishment.

11. It is true that Rule 828(c) of the Manual does not specifically require of a disciplinary authority to provide a copy of the enquiry report, if punishment proposed is forfeiture of increment. But where the disciplinary authority proposes to inflict major punishment



of forfeiture of one increment, equivalent to two black marks, it would be desirable that a copy of the enquiry report is served upon him/her to meet the adverse findings recorded in the enquiry report. Show cause ought to have been given at least giving a gist of findings recorded in enquiry report to enable the petitioner to respond.

12. As no show cause was given to the petitioner, before inflicting punishment, which fell within the category of major punishment, the impugned action of the respondents would not be sustainable in law. In such circumstances, the impugned order of punishment passed by the Deputy Inspector General, Magadh Range, Gaya and the IG, Patna are set aside. As the petitioner has retired, the proceeding would continue from the stage of issuance of afresh show cause in terms of Rule 43B of the Bihar Pension Rules. No copy of enquiry report need be given as the same has been annexed with the counter affidavit. It is expected that the proceeding would be concluded within four months from the date of

receipt/production of a copy of this order.

13. The writ petition stands allowed to the extent indicated above.

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(Samarendra Pratap Singh, J)

