

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5140 of 2016

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Kaisar Imam, Son of Md. Khurshid, resident of Village + P.O.-
Garhani, P.S. Chapokhari, District Bhojpur.

.... Petitioner.

Versus

1. The State of Bihar, through its Secretary, Department of Home Affairs, Patna Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General, Central Range, Patna.
4. The Superintendent of Police, Nalanda at Biharsharif.
5. The Superintendent of Police, Bhojpur at Ara.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Mrigank Mauli, Advocate
Mr. Sanjay Kumar, Advocate
Mr. Sanket, Advocate
Mr. Samir Kumar, Advocate

For the Respondents : Mr. Brajesh Kumar, AC to AAG-11

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 15-07-2016

Heard counsel for the petitioner and learned
counsel appearing for the State.

2. The petitioner was a constable posted in Traffic
Section in the district of Biharsharif. During the period
08.11.2013 onward, he was assigned to perform his duties at
Amber Chowk, Biharsharif. In the meantime, an F.I.R. was
instituted on 15.11.2013 at 08:00 p.m. by one Mohan Singh,
alleging that during Taziya Procession, the petitioner along
with other accused started assaulting the informant and



others causing injuries to them. On the letter of S.P. Bhojpur, the petitioner was made accused of Charpokhari P.S. Case No. 229 of 2013, registered for offences under Sections 147, 148, 149, 323, 324, 325, 447, 307, 153A, 504, 505 and 506 of the Indian Penal Code. Subsequently, a departmental proceeding was also started against the petitioner vide Memo No. 5459, dated 04.12.2013, of S.P. Nalanda. He was charged for his involvement in communal conflict during the Taziya Procession on 15.11.2013 at 07:45 P.M. at village Garhani, which also gave rise to Charpokhari P.S. Case No. 229 of 2013. The charges gave rise to Departmental Proceeding No. 47 of 2013. The Inquiry Officer, in his report, found the petitioner guilty of the charges. On consideration of the inquiry report, and after providing an opportunity of hearing, the petitioner was dismissed from service vide order, dated 27.08.2014 of S.P. Nalanda, which order was confirmed in appeal as well in memorial vide orders, dated 02.07.2015 and 30.12.2015, respectively.

3. Being aggrieved, the petitioner has filed the instant writ application. The petitioner submits that there was no positive evidence either before the Inquiry Officer or before the Disciplinary Authority to come to the conclusion with respect to petitioner's involvement in the assault, which took place during communal conflict. Learned counsel submits that no witness came forward to support the involvement of the petitioner in the incident, which took place on the eve of Taziya Procession. Furthermore, even during criminal trial

neither the informant nor any witnesses made any statements with respect to petitioner's involvement in communal conflict. He submits that he has been held guilty only on the basis of prosecution case in F.I.R., of which, he has been acquitted in the trial.

4. Counsel for the State opposes the plea of the petitioner. Learned counsel submits that as many as three witnesses stated before the Inquiry Officer that the petitioner was found absent from the place of his duty from 14.11.2013 till the morning of 16.11.2013. The absence of the petitioner coupled with being a named accused in the F.I.R., would amply support the charge of his involvement in communal conflict. The standard of proof in departmental proceeding is different than as in criminal trial and one could be held guilty on principle of preponderance of probability.

5. In my view, though the evidence of the witnesses can be a relevant factor for the issue that the petitioner was found missing from his place of duty from 14.11.2013 till the morning of 16.11.2013, but mere absence from the said place of duty, cannot be a factor to assume his presence at a particular place, in absence of any cogent material. It is true that this Court, in disciplinary matter, would not go into sufficiency or otherwise of the materials on which the Disciplinary Authority recorded its finding but nonetheless, the same is to be based on some materials. Here, the maximum material against the petitioner the F.I.R and his involvement in it. The principle of preponderance of

probability against the delinquent could have held good, had he not been acquitted in criminal case, and F.I.R. would have stood good. None of the witnesses has supported his presence at the relevant place.

6. In view of aforesaid circumstance, I am of the considered view that there is no cogent material to establish that the petitioner was present at the relevant place, in absence of any evidence of any witness to the aforesaid effect. No weightage could be given to F.I.R, as he has been acquitted. As such, the impugned orders of the Disciplinary Authorities are not sustainable in the eye of law and accordingly, set aside. However, setting aside the order of dismissal would not come into the way of the Disciplinary Authority to proceed with fresh charge with respect to petitioner's purported absence from his duty at Amber Chowk, Biharsharif from 14.11.2013 till the morning of 16.11.2013.

7. With the liberty aforesaid, the writ application is allowed. In the facts and circumstances of the case, the petitioner would not be entitled for salary for the period of his dismissal.

(Samarendra Pratap Singh, J.)

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