

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10168 of 2014

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1. Anupam Kumar Tiwary, son of Late Krishna Murari Tiwari, resident of vill. + P.O. Murika, P.S. Sigori, District Patna.
 2. Rudra Narayan Pandey, son of Late Damodar Mishra, resident of vill. Kali Prasad Road, Barh, P.O. + P.S. Barh, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Personnel & Home Special Department, Govt. of Bihar, Old Secretariat, Patna.
4. The Director General of Police, Old Secretariat, Patna.
5. The Additional Director General of Police, Old Secretariat, Patna.
6. The Deputy Inspector General of Police (Human Rights), Patna, Bihar.
7. The Assistant Inspector General of Police (Inspection), Old Secretariat, Patna.
8. The Senior Superintendent of Police, Patna.
9. The Deputy Inspector General of Military Police (Central Zone), Patna.
10. The Deputy Secretary of Finance, Old Secretariat, Patna.
11. The Under Secretary (General Administration Department), Bihar, Patna.
12. The Superintendent of Police (C.I.D.) Crime Branch, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey
For the Respondent/s : Mr. Gyan Prakash Ojha, GP-22
Mr. Sushil Kumar Singh, AC to GP 22
Mr. Atal Bihari Pandey, AC to GP 22

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 29-01-2016

Learned counsel does not press the case of petitioner no. 2 which is dismissed as not pressed with a liberty to move the appropriate forum in the matter.

Heard learned counsel for the petitioner no. 1 and learned counsel appearing for the State.

The petitioner is aggrieved by the order dated 11.06.2014 passed by learned DGP, Bihar in exercise of the power of review vested under Rule 853A of Police Manual, whereby he has converted

the punishment of one black mark to one of dismissal from service.

The relief is founded on the premise that power under rule 853A has been exercised after undue time span of nine years which is not permissible in law in view of the decision of this Court in the case of Anjan Kumar Singh Vrs. State of Bihar & Ors., reported in 2001 (4) PLJR, 177. In the case, this court has observed that power under Rule 853A can be exercised by the Inspector General of Police, but it has to be undertaken within a reasonable time. The delay of three years in exercising the power was held to be fatal in the case.

The facts of the case in hand is that the petitioner was appointed as constable on 31.08.1984. He was subsequently promoted to the post of ASI of Police. He was departmentally proceeded on the charge of securing loan on forged documents. The Inquiring Officer found the charge to be true and he was inflicted a punishment of one black mark in service record by the disciplinary authority. The matter rested and remained settled so. However, after lapse more than 9 years, the DGP in exercise of its power under rule 853A has reviewed the order of punishment of one black mark into one of dismissal from service.

Learned counsel for the State submits that the impugned order of dismissal was passed by the DGP in light of power conferred under rule 853A, after issuing due notice to the petitioner. The petitioner further committed misconduct by not submitting his reply

to the show-cause sought by the DGP. He submits that a vigilance case is also pending against the petitioner.

I have heard learned counsel for the parties. The nature of allegations levelled against the petitioner was serious. The learned DGP may not be wrong in observing that the punishment of one black mark would be on a lenient side. The power of review was there. But such power ought to have been exercised within a reasonable period. Exercise of such powers after lapse more than nine year cannot be said to be reasonable and is accordingly, set aside.

However, it goes without saying that the disciplinary authorities can take steps in accordance with law if the petitioner has committed an act of insubordination by not replying to the letter of DGP Police.

With the liberty aforesaid, the writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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