

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22255 of 2014

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Rajesh Sharan, Son of Late Murari Sharan Shrivastava, resident of Mohalla -
Jaiprakash Nagar, Bettiah, P.S. Bettiah Muffasil, District - West Champaran.

.... Petitioner.

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Deputy Inspector General of Police, Munger Range, Munger
4. The Superintendent of Police, Munger
5. The Inspector of Police, Jamal Pur Circle, Munger

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate

For the Respondent/s : Mr. AC to AG

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 05-04-2016

Heard learned counsel for the petitioner and the respondents.

2. The petitioner is a Sub-Inspector. He was posted in Jamalpur police station as officer-in-charge on 19.08.2013. He was departmentally proceeded for the two charges contained in Memo no. 02, dated 20.03.2014 (Annexure-11). The charge was that the petitioner intentionally failed to register an F.I.R. on the complaint of one Sheema Kumar, made on 23.12.2013. The second charge was that the petitioner failed to furnish explanations to the show-cause, dated 28.12.2013 of the Superintendent of Police, Munger. The enquiry officer exonerated the petitioner of the charges vide his report, dated 20.05.2014, as contained in Annexure-15. The Superintendent of



Police, Munger accepted the report. However, the Deputy Inspector General, Munger Range, Munger in exercise of its power conferred under Rule 853A of Bihar Police Manual vide his letter No. 1249, dated 12.06.2014, differed with the enquiry report and forwarded his report to Inspector General, Head Quarter, Bihar, Patna for necessary actions. A copy of the report of the Deputy Inspector General, Munger Range, Munger, dated 12.06.2014 is contained in Annexure-A to the counter affidavit filed on behalf of the respondent no.3.

3. The Director General of Police agreeing with the recommendations of Deputy Inspector General, Munger Range, Munger under Rule 853 (a) of the Bihar Police Manual issued second show-cause notice to the petitioner to make his submissions. A copy of the second show-cause notice, dated 12.09.2014 is contained in Annexure-18.

4. The petitioner filed his show-cause reply denying the charges vide his letter, dated 27.09.2014, contained in Annexure-19. Not being satisfied with the explanation of the petitioner, the respondent decided to withhold increment of salary of one year amounting to two black marks. The petitioner has challenged the proceedings as well as the second show-cause notice, dated 12.09.2014 issued by the Director General of Police contained in Annexure-18.



5. The petitioner submits that the enquiry officer on consideration of materials on record rightly came to the finding that there was no dereliction on his part to institute an F.I.R., as the complainant, also an Assistant Sub-Inspector of Police, only requested for institution of a Sanha, as she apprehended that her bag may have fallen while she was traveling on Rickshaw from Chhoti Daulatpur to Jamalpur Railway Station. After second thought Sheema Kumari decided to register an F.I.R., which was promptly registered by her on the same i.e. 23.12.2013 (Annexure-3). He next submits that he did not furnish reply to the show-cause, dated 23.12.2013, as he was put under suspension from 31.12.2013.

6. Though the petitioner has raised quite a ground in support of his case, nonetheless, the matter can be disposed of on a limited issue whether the second show-cause notice, issued on 12.09.2014 is in accordance with law.

7. I find that the second show-cause notice, dated 12.09.2014 is defective and in teeth of Rule 18(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. If a disciplinary authority disagrees with the findings of the enquiry officer, he has to give his tentative reasons for such disagreement. I find that no reason has been assigned in the show-cause notice, save and except that the conduct of the petitioner is not satisfactory. It is



not necessary for the disciplinary authority to mention the reasons of disagreement in detail, but at least there could be some tentative reasons for such disagreement. Reference can be had to the decisions in case of **Punjab National Bank & Ors Vs. Kunj Behari Misra**, reported in (1998) 7 SCC 84 and **Lav Nigam Vs. Chairman and Managing Director, ITI Ltd. & another**, reported in (2006) 9 SCC 440.

8. Besides this, the disciplinary authority at the stage of issuing second show-cause notice has come to a final conclusion with respect to the guilt of the petitioner. In such circumstances, issuance of show-cause notice would be a mere formality rendering the consideration of show-cause reply an empty formality. The Court in the case of **Oryx Fisheries Private Limited Vs. Union of India & Ors.**, reported in (2010) 13 SCC 427 has observed that a disciplinary authority ought not to pre-determine the guilt of a delinquent at the stage of issuance of show-cause notice and should manifestly keep its mind open.

9. In this view of the matter, the show-cause notice, dated 12.09.2014 is quashed. As a consequence, the impugned order of punishment, which is a fall out of second show-cause notice, is too set aside and the matter is remitted to the disciplinary authority with a liberty to proceed afresh from the stage of issuance of the second

show-cause notice.

10. The writ application, as such, is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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