

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1969 of 2014

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1. Sheikh Masalauddin Son of Late Sheikh Dostogi, Resident of Village- Sahinaon,
P.O- Babhnaul, P.S.- Dawat, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar through the Director General and Inspector General of Police,
Bihar, Old Secretariat, Patna
2. The Inspector General of Police, Bhagalpur Zone, Bhagalpur
3. The Deputy Inspector General of Police, Munger Range, Munger
4. The Superintendent of Police, Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rashid Izhar, Adv.

Mr. Tabishuddin, Adv.

Mr. Sharad Upadhyay, Adv.

For the Respondent/s : Dr. Anil Upadhyay, SC 16

Mr. Naresh Prasad, A.C. to S.C.2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-08-2016

Heard Mr. Rashid Izhar, learned counsel for the petitioner and
Dr. Anil Kumar Upadhyaya, learned S.C.2 for the State.

The petitioner is aggrieved by the order dated 16.8.2013
bearing memo No. 1359 of the Inspector General of Police, Bhagalpur
Circle, Bhagalpur whereby he has confirmed the order of dismissal
passed by the Superintendent of Police, Begusarai bearing Memo No.
6188 dated 1.11.2007 as well as the appellate order dated 18.1.2008 of
the Deputy Inspector General of Police, Munger as well as the
appellate order dated 18.6.2008 earlier passed by him. The copies of

the orders dated 1.11.2007, 18.1.2008, 18.6.2008 and 16.8.2013 are impugned at Annexures 6, 7, 8 and 10 respectively.

The facts leading to the impugned orders is not in dispute and it is on account of no less than 41 default by the petitioner which includes overstaying after expiry of leave period as well as absconding from duty that the order of dismissal has been passed. The petitioner came before this Court in C.W.J.C. No. 18520 of 2008 and a Bench of this Court vide judgment and order passed on 20.6.2013 did not choose to interfere with the orders of the penalty rather the matter was remitted for consideration on the quantum of punishment by the Inspector General of Police, Begusarai. The matter was reconsidered and the Inspector General of Police, Begusarai Range vide the order impugned dated 16.8.2013 has confirmed the order of dismissal not finding sufficient reasons to interfere therewith.

It is the argument of Mr. Izhar learned counsel for the petitioner that even though the petitioner is found guilty of default in overstaying his leave period but then each time the overstay leave period has been adjusted against the leave available or from the salary of the petitioner. He submits that at no stage was the petitioner ever subjected to a departmental proceeding and it is only by the arrival of the incumbent Superintendent of Police that the entire period ranging 1986 to 2006 i.e. 20 years of the petitioner was reviewed to initiate a



fresh departmental proceeding for overstay and the disciplinary authority taking note of the admitted circumstances regarding adjustment of the periods in question with the leave period admissible and/ or from the salary of the petitioner yet vide his order passed on 1.11.2007 ordered for dismissal of the services of the petitioner and which order has been affirmed by the superior authority. It is the argument of learned counsel with reference to certain orders placed on record of the rejoinder that while in the case of several others, it is the opinion of the respondent authority that any punishment in addition to the punishment already inflicted on the delinquent, would amount to double jeopardy but such principle has been overlooked in so far as the case of the petitioner is concerned. He submits that Rule 165 of the Bihar Service Code read with Rule 803 and Rule 843 of the Bihar Police Manual no doubt while providing for adjustment of the period of overstay also conceives initiation of the departmental proceedings by treating it to be a case of misconduct in the event it is found to be willful but such is not the case herein and in the present case the overstay of the petitioner has been adjusted against the leave admissible and from the salary. He thus submits that there was neither any occasion for initiation of the proceeding in question after action had already been taken by the authorities in respect of the overstay period and besides that, the penalty of dismissal is wholly illegal and



excessive considering that similarly placed people have been accorded a differential treatment. Learned counsel while admitting to the order passed in the previous round proceedings present at Annexure-9 submitted that the case of the petitioner required a reconsideration but the Inspector General of Police has merely reiterated his earlier view without taking note of the opinion expressed by this Court.

The argument of Mr. Rashid Izhar is contested by Dr. Upadhyay learned State counsel to submit that the stage at which this case stands, it would not be open for the petitioner to raise issue on the validity of the disciplinary proceedings. In reference to the order of the Bench present at Annexure-9 he submits that the Court has clearly expressed its opinion that the Court was not inclined to interfere with the matter except on the quantum of punishment considering that the petitioner has served for 32 years. It is argued by Dr. Upadhyay that in so far as the order of the disciplinary authority upholding the charge is concerned, it has attained finality in the decision of the Court and any expression on the same in the light of the argument advanced by Mr. Izhar would be a review of the order passed by this Court in the previous round. He submits that the order of the bench was not questioned by the petitioner before a superior court and which has attained finality and is binding on the parties. He



submits that in view of the expression of this Court, the only exercise required from the Inspector General of Police was to consider as to whether the penalty of dismissal was disproportionate to the charges. He submits that this aspect of the matter has been elaborately discussed by the Inspector General on remand and taking note of the habitual default formed by the petitioner, the punishment imposed is justified. Learned counsel has referred to a well known decision of the Supreme Court rendered in the case of **B.C. Chaturvedi versus Union of India & Ors.** reported in (1995) 6 SCC 749 to submit that the legal position as regarding interference in the disciplinary proceedings in so far as the issue of punishment is concerned, stands well settled and unless the decision is shockingly absurd, the writ Court would normally refrain from interference with the decision .

I have heard learned counsel for the parties and I have perused the records.

It is extensively argued by Mr. Izhar in reference to the statutory provisions underlying Rule 803 alongside Rule 843 and Rule 844 of the Bihar Police Manual that every case of overstay may not result an order of dismissal. Rule 803 of the Police Manual relates to absence from duty after expiry of leave and for the purpose of imposition of penalty for overstay on leave, it makes a reference to Rule 843. Rule 843 categorises a willful overstay on leave or absence



from duty without leave, as a misbehaviour resulting in initiation of departmental proceedings for infliction of punishment unless it appears to the police officer that the delinquent had sufficient reason to stay on leave. The rule confers wholesome power on the Superintendent of Police or the Commandant as the case may be, to take appropriate action against any Officer who has not reported for duty in time for unexplained reasons, including initiating departmental proceeding in this regard and for imposing punishment provided in Rule 843. The power thus exists in the disciplinary authorities to take suitable action against an erring officer and has been exercised. The argument of Mr. Izhar that the overstay by the petitioner after expiry of leave having been adjusted, there was no occasion for the disciplinary authority to initiate proceedings, in my opinion, is a plea belatedly raised, for this issue came to an end in the Bench decision of this Court in the earlier round of proceeding present at Annexure-9. The Bench in very clear terms has concluded that it was not inclined to interfere with the matter. In view of such clear conclusion drawn by the Bench and not appealed against by the petitioner, in my opinion it is too late in the day for Mr. Izhar to argue for reopening of the issues which stand concluded.

For the same reason, the reliance placed by Mr. Izhar to the orders passed in case of some other similarly placed persons brought



on record in the rejoinder, would also not come to his aid for this aspect were neither pleaded before the Bench in the previous round of proceeding nor it was brought to the attention of the disciplinary authorities. In fact, in view of the opinion expressed by the Bench in the earlier round of proceedings, any opinion by this Court on the merits of the proceedings would amount to rehearing the matter which stands concluded vide Annexure-9.

The limited scope available for the petitioner to argue in the present case is whether the reiteration of the opinion by the Inspector General of Police in maintaining the order of dismissal suffers from any perversity requiring any interference. The scope of interference on the quantum of punishment stands discussed by the Supreme court in the judgment of **B.C. Chaturvedi** (supra) and reiterated in a recent judgment reported in **(2015) 2 SCC 610 (Union of India Vs. P.Gunasekaran)** when the Supreme Court after taking note of the long list of judgments on the issue, has reiterated the legal position on interference on the quantum of punishment by holding that until such time, the order of penalty appears shocking to the conscience of the Court, an interference would not be done in a routine manner. The order passed on remand is impugned at Annexure-10 and discusses the reasons which has prompted the Inspector General of Police to maintain the order of dismissal. In my opinion, the order would not

require an interference on two counts. Firstly, that had the order of dismissal been shocking to the conscience of the Court it would have been set aside in the previous round itself since it was a finality of the disciplinary proceedings which was put to question before this Court. The Bench not having interfered with the order of penalty rather having left the matter to discretion of the Revisional Authority, a reiteration of the punishment would not bring the opinion within the realm of perversity and secondly the opinion is founded on sound reasons.

In the circumstances discussed, I am not persuaded to interfere with the order of penalty.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

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