

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1188 of 2017

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Pramod Das, S/o Sri Deeplal Das, Resident of Village/Mohalla- Balua, P.O.-
Lagma, Police Station- Dumra, District-Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar represented through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Personnel and Administrative Reforms, Government of Bihar, Patna.
3. The Principal Secretary, Department of Home (Prison), Bihar, Patna.
4. The Inspector General, Prison and Correction Services, Bihar, Patna.
5. The Deputy Inspector General, Prison and Correction Services, Bihar Patna.
6. The Joint Secretary cum Director (Administration), Prison and Correction Services, Bihar Patna.
7. The Leave Vacancy Officer, Prison and Correction Services, Bihar Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 2237 of 2017

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Shrawan Kumar, son of Late Pran Mohan Yadav, Resident of Village- Shyampur,
P.S.- Kotwali, District Munger, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Prisons and Reform Services, Department of Home (Prison), Government of Bihar, Patna.
4. The Inspector General of Prisons, Prisons and Reforms Services, Bihar, Patna.
5. The Joint Secretary cum Director (Administration), Inspectorate of Prisons and Reform Services, Department of Home, Government of Bihar, Patna.
6. The Superintendent, Central Jail, Bhagalpur, District Bhagalpur, Bihar.
7. The Superintendent, Central Jail, Gaya, District Gaya, Bihar.

.... Respondent/s

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Appearance :

(In CWJC No.1188 of 2017)

For the Petitioner/s : Mr. Krishna Chandra, Advocate

For the Respondent/s : Mr. Ujjwal Kumar Sinha, AC to AAG-3

(In CWJC No.2237 of 2017)

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s : Mr. Ujjwal Kumar Sinha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-05-2017



Heard Mr. Krishna Chandra, learned counsel appearing for the petitioner in CWJC No.1188 of 2017 and Mr. Prabhat Ranjan, learned counsel appearing for the petitioner in CWJC No.2237 of 2017 while the State is heard through Mr. Ujjwal Kumar Sinha, learned Assisting Counsel to Additional Advocate General No.3 who appears in both the writ petitions.

With the consent of the parties the two writ petitions have been heard analogous with a view to their final disposal at the stage of admission stage itself.

Since the two writ petitions arise out of the same transaction albeit the impugned orders are different hence I would be referring to the pleadings and the Annexures as occurring in CWJC No.1188 of 2017 unless clarified with specific reference to the other writ petition.

While the petitioner in CWJC No.1188 of 2017 prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.5477 dated 16.9.2016 passed by the Inspector General, Prison and Reforms Services, Bihar, Patna, whereby he has been dismissed from service in exercise of powers vested in the Disciplinary Authority under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') and affirmed by the Appellate Authority i.e. the Principal Secretary, Prison and Reforms



Services, Government of Bihar, Patna vide order bearing Memo No.7675 dated 27.12.2016 which orders are impugned at Annexures 10 and 12 respectively to the said writ petition, the petitioner in CWJC No.2237 of 2017 is similarly aggrieved by the order of dismissal bearing Memo No.5478 dated 6.9.2016 passed by the Inspector General, Prisons and Reforms Services, Bihar, Patna impugned at Annexure-6 as affirmed by the Appellate Authority vide order bearing Memo No.7676 dated 27.12.2016 impugned at Annexure-8 to the second writ petition.

Facts of the case leading to the impugned orders lie in a very narrow compass. These petitioners along with several others were proceeded against for act of misconduct in allowing a prisoner, namely, Azad Kumar to escape from the prison custody on 18.8.2015. While petitioner Pramod Das happens to be the Assistant Jail Superintendent, the petitioner Shrawan Kumar happens to be the reserved Warder. The incident relates to Divisional Jail, Jehanabad and following the escape of the prisoner that two enquiries were held, the first of which was held under the supervision of the Superintendent, Central Jail, Gaya who submitted his report on 1.9.2015 present at Annexure-3 confirming the negligence amounting to misconduct not only in so far as the petitioners are concerned but also the Incharge Superintendent Ram Chandra Mahto, Deputy Superintendent, Sanjay Kumar, the Gate Incharge



Warder, Yogendra Singh, the Gate Warder Harendra Kumar Choudhary, the Prison Hospital Incharge, Ram Vilas Singh and the Senior Warder Munna Singh. A joint enquiry was also conducted under the supervision of the Joint Secretary cum Director (Prisons) and the Leave Reserved Officers, Prisons and Reforms Services who submitted his report vide Memo No.4952 dated 21.8.2015, a copy of which is present at Annexure-4. The joint report is also in tune with the report submitted by the Superintendent, Central Jail, Gaya upholding the misconduct on the part of every one connected with this incident.

It is stated that while the Incharge Superintendent, Ram Chandra Mahto and Deputy Superintendent Sanjay Kumar were merely show caused on the incident and whereafter the proceedings dropped on receipt of the explanation, proceedings were initiated against the two petitioners herein along with Hospital Warder, Ram Vilash Singh, Sr. Warder, Munna Singh, the Gate Warder, Harendra Kumar Choudhary and the Gate Warder Incharge, Yogendra Singh. While the petitioners have been dismissed from service, of the other four it is informed that proceedings were dropped against the Senior Warder, Munna Singh while the rest three were visited with the punishment of stoppage of three annual increments with cumulative effect.

The charge against each one of the Jail Officers named in



the report submitted by the Superintendent, Central Jail, Gaya present at Annexure-3 and the joint report present at Annexure-4 is identical and primarily alleges casual and negligent attitude in allowing the prisoner to escape. Even the charge-sheet is on almost identical lines. In so far as the petitioner Pramod Das is concerned, the charge-sheet is impugned at Annexure-6 which is dated 19.11.2015, in so far as the petitioner Shrawan Kumar is concerned, the charge-sheet has not been annexed but is on similar lines and there is no such dispute.

Reliance is again placed on the report given by the two authorities as discussed above as well as the oral evidence taken. The enquiry report submitted by the Enquiry Officer is impugned at Annexure-8 to the writ petition and which is a comprehensive report dealing with each of the delinquent. The Disciplinary Authority has upheld the misconduct for both the petitioners followed by second show cause at Annexure-8 with similar show cause to the other petitioner and on reply being filed by each of them, it did not satisfy the Disciplinary Authority who has proceeded to pass the order of dismissal. Even the appeal has met the same fate as it was dismissed by the Appellate Authority in each of the two cases. Feeling aggrieved the two petitioners are before this Court.

The sum and substance of arguments advanced by Mr. Krishna Chandra and Mr. Prabhat Ranjan on behalf of the two



petitioners are as follows:

- (a) Even though a Presenting Officer was appointed for the disciplinary enquiry but no evidence was led and the Disciplinary Authority has simply proceeded to uphold the misconduct on the basis of the enquiry report submitted by the Superintendent, Central Jail, Gaya as well as the joint enquiry report present at Annexures 3 and 4 of the present writ petition.
- (b) The order is based on no evidence inasmuch as even though the petitioners were on duty but there is no definite evidence as to the negligence or collusion of these petitioners in allowing the prisoner to escape.
- (c) The conclusion drawn by the Enquiry Officer as upheld by the Disciplinary Authority as well as the Appellate Authority is primarily on suspicion.
- (d) In so far as the petitioner Pramod Das is concerned, the opinion of the Enquiry Officer is influenced on the past conduct of the said petitioner which is impermissible in a departmental proceeding.
- (e) The conduct of the Disciplinary Authority is discriminatory not only in the matter of initiation of the departmental proceeding but also in the matter of imposition of punishment because whereas the Incharge Superintendent



as well as the Deputy Superintendent though held equally responsible for the escape of the prisoner but merely show caused as an eyewash to be dropped subsequently, even in the case of other delinquent(s) who were proceeded against, they were let off with much lesser punishment of stoppage of three annual increments with cumulative effect.

- (f) The opinion of the Disciplinary Authority is not an independent exercise but he has got swayed by the enquiry report submitted by the Superintendent, Central Jail, Gaya present at Annexure-3 and the joint report present at Annexure-4.
- (g) In so far as the petitioner Shrawan Kumar is concerned, his name does not find mention in the enquiry report present at Annexure-4.

Learned counsel for the petitioners in support of their submission that the order is not sustainable as it is based on no evidence has relied upon a Constitution Bench judgment of the Supreme Court reported in **AIR 1964 SC 364 (Union of India vs. H.C. Goel)**.

The argument of Mr. Chandra and Mr. Ranjan has been contested by Mr. Sinha, learned Assisting Counsel to Additional Advocate General No.3 by submitting that it is in consideration of



the seriousness of the charge that the Disciplinary Authority has imposed the punishment and since there were no such materials in so far as the Incharge Superintendent and the Deputy Superintendent are concerned, on explanation being received, the proceedings were dropped but in so far as the petitioners and others are concerned they being found to be involved in the escape that the punishment has been accordingly inflicted.

In response to the issue of Presenting Officer, he submits that the Presenting Officer was present during the proceedings and since there was no contest on the charge that these delinquents were on duty when the prisoner escaped, it was for the delinquent to prove their innocence. He submits that the fact finding report of the Superintendent, Central Jail, Gaya and the joint report is on record and confirms the involvement of each of these petitioners in the escape of the prisoner and since no strict rules of evidence is to be followed in so far as the disciplinary proceeding is concerned rather it is on the principles of preponderance of probability that the misconduct is to be decided, the very fact that the prisoner has escaped, these petitioners cannot escape from the responsibility.

In response to the argument of learned counsel for the petitioners that the finding is based on no evidence it is the argument of Mr. Sinha that the very escape of the prisoner from the prison is an evidence and it is thereafter for the petitioners to prove their



innocence in the matter. He submits that an appointment in uniformed service especially in prison has to be accompanied with utmost discipline and none can be allowed to be casual or negligent for such negligence has proved disastrous.

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

As I have already indicated the facts are not too many and briefly stating, these petitioners face dismissal for the escape of a prisoner. May be there are some infirmities in the disciplinary proceedings and the reports referred to by the Enquiry Officer which forms the basis for the impugned orders, have not been proved but then the allegation facing the petitioners cannot be brushed aside because they are rather serious to be diluted on such alleged procedural infirmity. A prisoner has escaped from the prison and in my opinion every one connected were jointly and individually responsible for the escape and none could be allowed to escape the responsibility. If the department thought it proper to initiate a proceeding then the charge could not have been restricted to the petitioners or the others facing the enquiry alone rather every person on duty on 18.8.2015 shared the responsibility.

Having observed thus, in my opinion considering the seriousness of the charge as well as the undisputed position that a prisoner had escaped and these petitioners were on duty, I am in no



confusion that they have been rightly proceeded for misconduct and thus whatsoever be the lacuna in the proceeding, it does not persuade this Court to interfere with the same. As rightly argued by Mr. Sinha, learned State Counsel the charge has to be tested on the principles of preponderance of probability but the argument does not explain the discriminatory conduct of the Disciplinary Authority to have let off the others either without any punishment or with lighter punishment.

Even though the two enquiry reports present at Annexures 3 and 4 jointly and individually holds everybody responsible for the escape of a prisoner including the Incharge Superintendent and the Deputy Superintendent as well as the other Warders but while the Incharge Superintendent and the Deputy Superintendent and the Head Warder, namely, Munna Singh have escaped the punishment as the proceedings were dropped against them, the Hospital Warder, Ram Vilash Singh who was responsible for the custody of the escaped prisoner along with the Gate Warder Harendra Kumar Choudhary and Yogendra Singh have been let off with a punishment of stoppage of three annual increments which though, with cumulative effect is a major punishment but it does not take away their service. Clearly the Disciplinary Authority has faltered on being selective on the issue of imposition of penalty. Though Mr. Sinha is right in submitting that there cannot be a reverse application of equality



clause and the legal position is well settled in this regard but then the principle as advanced by Mr. Sinha would not apply in the present case for it is the issue of imposition of punishment on the delinquents facing the same charge. Had the charge been different, may be, the argument of Mr. Sinha would have warranted consideration but in the present case each one of the jail staff faces the same charge as others and there is no difference in the allegation facing the delinquents.

The legal position in this regard is well settled and if several delinquents are proceeded against, for the same charge, then their respective position in the seniority ladder would become irrelevant for the purpose of imposition of penalty. Reference in this regard is made to the judgment of the Supreme Court reported in **(2008) 12 SCC 331 (Man Singh vs. the State of Haryana)** and for the sake of convenience I am tempted to reproduce paragraph 20 and 22 of the judgment.

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as



a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.

22. In the backdrop of the abovementioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the second appeal by an unreasoned judgments. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle”

Reference is also made to a judgment of the Supreme Court reported in **(2010) 5 SCC 783 (State of Uttar Pradesh vs. Raj Pal Singh)** and for the sake of convenience I am persuaded to put on record the observation of the Bench as found in paragraphs 5 and 6 of the judgment:

“5.Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents.



The reasoning given by the High Court cannot be faulted with since the State is able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.”

The observations of the Bench squarely applies to the present case for once the charge facing the delinquents is found to be same and in relation to the same incident then they cannot be dealt with differently in the matter of award of punishment.

The matter requires a remand to the Disciplinary Authority for reconsideration of the matter exclusively on the issue of quantum of punishment bearing in mind that while the Incharge Superintendent, the Deputy Superintendent and the Head Warder, Munna Singh facing the same charge, have been let off with no punishment, in so far as the remaining three Warders are concerned, namely, Ram Vilash Singh, Harendra Kumar Choudhary and Yogendra Singh they have been visited with the punishment of stoppage of three annual increments with cumulative effect. I leave the discretion to the wisdom of the Disciplinary Authority to consider this aspect of the matter in the background of legal position settled in the judgment of the Supreme Court and pass appropriate



orders in the case of the petitioners.

In consequence the orders of punishment impugned at Annexure-10 in CWJC No. 1188 of 2017 and Annexure- 6 in CWJC No.2237 of 2017 as affirmed by the appellate Authority impugned at Annexure-12 and Annexure-8 respectively are accordingly quashed and set aside. The matter is remitted to the Disciplinary Authority for its disposal in the light of the observation made hereinabove preferably within a period of six weeks from the date of receipt/production of a copy of this order.

The writ petitions are allowed with the observations aforementioned.

Let the records so produced by Mr. Ujjwal Kumar Sinha, learned Assisting Counsel to Additional Advocate General No.3 be returned to his custody.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26-05-2017
Transmission Date	NA

