

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13255 of 2014

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Hemant Kumar Singh, son of Shri Brij Kishore Singh, resident of Village Dharampur, P.S. Mohiuddin Nagar, District Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police, Saran, Chapra.

.... Respondents

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Appearance :

For the Petitioner : Mr. Satyabir Bharti, Advocate.

For the State : Mr. Priyadarshi Matin Sharan, A.C. to A.A.G.
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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 12-07-2017 Heard learned counsel for the petitioner and learned counsel for the State.

In this writ application, the challenge is made to the order dated 30.05.2014, contained in Memo No. 2069 (Annexure-9), passed by the respondent no.2, the Director General of Police, Bihar, Patna, by which under purported exercise of powers conferred under Rule 853 (A) (a) of the Bihar Police Manual, the respondent no.2, while making review of the departmental proceeding no.26/08 of Saran District, had passed order of dismissal in respect of the petitioner from service with immediate effect.

Learned counsel for the petitioner submits that the



petitioner initially joined as Constable in Bihar Police and he was promoted to the post of Assistant Sub-Inspector of Police on 12.09.2002. At the relevant time, the petitioner was posted as Assistant Sub-Inspector in Dariyapur Police Station within the district of Saran. One Sachida Prasad Srivastava, happens to be the informant of a police case, filed a complaint before the Vigilance about the demand of bribe of Rs. 5,000/- made by the petitioner for making arrest of the accused and for submission of charge sheet, whereupon a raiding party was constituted and the petitioner was trapped and arrested, having allegation of taking bribe of Rs. 5,000/-, accordingly, Vigilance Case No. 015/2008 was registered against the petitioner, which is pending before the Special Judge, Vigilance, Muzaffarpur. The petitioner was suspended thereafter, departmental proceeding commenced and ultimately the Disciplinary Authority held the petitioner guilty and awarded punishment i.e. stoppage of increment for the period of two years with non-cumulative effect, which shall be treated as three black spot in his service career. The Disciplinary Authority while passing the said order ignored the finding of Enquiring Officer, who held improper to record any finding in respect of the petitioner as for the similar charge, a criminal prosecution was pending before the Vigilance Court. The office of the Director General of Police, Bihar, Patna, asked show cause from the petitioner vide Memo No. 5147 dated 13.11.2013 that why he should not be removed from the



service, in pursuance thereto, the petitioner made his explanation before the Director General of Police, Bihar, Patna, and inviting attention towards the judgment of this court reported in 1996 (1) PLJR 401 and the judgment of Apex Court reported in AIR 1973 SC 2701. The learned counsel for the petitioner further submits that the power of review under Rule 853 (1) of the Bihar Police Manual has to be exercised within a reasonable period and in the present case such power has been exercised after more than five years of the order passed by the Disciplinary Authority, which is unreasonable and requires interference.

No counter affidavit has been filed on behalf of the State.

In the case of Anjan Kumar Singh –Vs- State of Bihar & Ors., reported in 2001 (4) PLJR 177, while dealing with the identical issue, this court held that the exercise of power conferred under Rule 853 (A) (a) of the Police Manual should be exercised within a reasonable period but could not be exercised in any manner beyond a period of more than three years.

Therefore, without going to the otherwise merit of the removal order, I am of the considered opinion that here is the case where, after lapse of five years, the power of review envisaged under Rule 853 (A) (a) has been exercised by the Director General of Police, Bihar, Patna, which is unreasonable because such power ought to have been exercised, within a reasonable period as held by



this Court i.e., three years from the date of passing of the final order in the departmental proceeding, by the Disciplinary Authority.

Therefore, the order under challenge contained in Memo No. 2069 dated 30.05.2014 (Annexure-9) is not sustainable in law, accordingly, set aside.

The respondents are directed to reinstate the petitioner in service forthwith. The intervening period from the date of dismissal to the date of reinstatement shall not be treated as a break in service for the purpose of pensionary benefits. It is made clear that the petitioner would not be entitled for payments of salary of the intervening period, from his dismissal to his reinstatement in service.

In terms of the forgoing directions and observations, the writ application is allowed.

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(Sudhir Singh, J)

