IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11608 of 2008

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Shatrughan Sharan, son of Sri Ram Vilash Singh, resident of village Bajoi Rampur, P.O. Lodipur P.S. Paraiya, District, Gaya

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Director General-cum-Inspector General of Police, Bihar, Patna
3. The Zonal I.G., Patna Zone, Patna
4. The D.I.G. of Police, Sahabad, Range, Dehri-on-Sone
5. S.P. Bhojpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Amarnath Singh,
Mr. Ram Pravesh Kr.,
Mr. Ashok Kumar, Advocates

For the State : Mr. Ragbwanand, G.A. 11,
Mr. Dr. Kamal Deo Sharma, A.C. to G.A. 11

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-06-2017

I have heard the parties and perused the records of this case including the original records of the disciplinary proceeding produced at the time of hearing by learned counsel for the State.

The petitioner seeks quashing of the order of dismissal passed by the Superintendent of Police on 07.12.1998 (Annexure 5), the order of D.I.G. dated 27.05.2000 of Police Sahabad Range, Dehri-on-sone (Annexure 6), the order of the Inspector General, Patna Zone, Patna dated 30.07.2003 (Annexure 9) and the order dated 24.04.2007 passed by the Director General of Police, Bihar, Patna (Annexure 10) dismissing the appeal memorial.

On the allegation that the petitioner, after sanction of 10

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days leave, proceeded on leave on 19.08.1993 but did not report after 10 days rather he reported on 10.02.1998, i.e., after lapse of 1624 days, charge was framed against the petitioner vide Annexure 2 dated 01.05.1998. Thereafter, departmental proceeding was initiated, however, the petitioner did not appear before the inquiry officer and, thus, *ex parte* enquiry was held holding the petitioner guilty. Thereafter, disciplinary authority concurred with the views taken by the inquiry officer issued notice upon the petitioner vide memo no.2259 dated 22.07.1998 granting him one month time for his comments against his proposed dismissal from service which is claimed to have been received by him on 31.07.1998 but he did not respond to the same. Eventually, the disciplinary officer, i.e., S.P. Bhojpur vide Annexure 5 dated 07.12.1998 passed final order of dismissal of the petitioner from the service. The petitioner, thereafter, moved before the D.I.G., Sahabad Range and again before the Inspector General of Police, Patna Zone and finally the appeal memorial filed before the Director General of Police, Bihar, Patna. All appeals were dismissed vide Annexure 6, 9 and 10 respectively.

Defence taken by the petitioner is that the absence was due to mental illness for which reliance has been placed upon certain medical reports etc. and also that the appellate orders passed by the D.I.G. is non-speaking one. The petitioner assails the entire proceeding *inter alia* on following grounds:-

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(i) The departmental proceeding was conducted *ex parte* without following the principal of natural justice as no notice of date of departmental inquiry was ever communicated to the petitioner.

(ii) The charge of memo was not served prior to initiation of departmental proceeding.

(iii) The medical reports etc. submitted by him at the time of joining have not been considered and the appellate orders are mechanical in nature without recording any reason and finally it is also stated that no step was taken under Rule 843 of the Bihar Police Manual before initiation of departmental proceeding which was mandatory.

A counter affidavit has been filed on behalf of the State. It is stated therein that the petitioner was granted only 10 days leave but he reported back on 10.02.1998 after overstaying for a period of 1624 days which proved his dereliction of duty which was unbecoming of a good police personnel. On the aforesaid charge, Bhojpur Proceeding No.8/98 was initiated against the petitioner but he never appeared despite the notices being issued to him. Thereafter, enquiry report was submitted holding that the charges are proved and agreeing with the finding of the inquiry officer/conducting officer, the petitioner was asked to show cause as to why he should not be dismissed from service but he did not reply the same. Thus, eventually he was dismissed vide order contained in Annexure 5. In the appellate

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orders, it has been held that the petitioner did not produce any chit of paper regarding his mental illness. However, since the petitioner had raised ground of violation of principle of natural justice in the conduct of enquiry, this Court had called for the original records of the departmental proceeding which was produced before it.

From perusal of the departmental proceeding, certain startling facts have emerged before this Court. It is true that charge was framed on 01.05.1998 but there is no evidence in the file that memo of charge was served upon the petitioner before 22.06.1998 as there is only one receipt dated 22.06.1998 duly singed by the petitioner which discloses that he had received a copy of memo of charge along with copies of the statement given by the witnesses. From the order-sheet of the inquiry proceeding, it appears that inquiry officer received the file on 05.05.1998. He had directed for issuance of notice upon the delinquent as well as the witnesses fixing 15.05.1998 as the date of hearing, however, there is no evidence on record that such notice was served and received by the petitioner. Again on 15.05.1998, a direction was given for issuance of notice upon the petitioner but there is no evidence on record that such notice was ever issued and received by him. On the next date of hearing, i.e., on 28.05.1998, since the petitioner was found absent and the witnesses were present, their respective statements were recorded and a direction was given on 28.05.1998 that copy of the statement should

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be forwarded to the delinquent and the next date was fixed on 11.06.1998. However, there is no evidence on record that such notice or copies of statements were sent and duly received by the petitioner. Again on 11.06.1998, last chance was given to the petitioner to answer the charges fixing the date on 25.06.1998. This time, it appears that 3 days prior to the date fixed for inquiry i.e., on 22.06.1998, a copy of memo of charge along with the statement of the witnesses were received by the petitioner. However, it is surprising that on the next date, i.e., three day thereafter, final report was submitted and file was returned to the concerned but the date of order appears to be 29.06.1998 and not 25.06.1998 which was the date fixed.

Thus, from the perusal of the record, it appears that the petitioner's allegation that neither the memo of charge was served upon him nor the date of inquiry as fixed by the inquiry officer were ever communicated to him appears to be correct as the petitioner had received memo of charge along with the statement of the witnesses only on 22.06.1998 but in that notice also, it does not disclose as to what was the next date of hearing though next date of hearing was merely three day thereafter on 25.05.1998. However, the order appears to have been passed by the appellate authority on 29.05.1998 which was not the date fixed.

The second issue raised by the petitioner is that Rule

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843 of the Police Manual has not been followed as no preliminary enquiry was made by the Superintendent of Police to reach to the conclusion as to whether the petitioner had any good reason for delay or not. After such inquiry, if no satisfactory explanation was found then only disciplinary action was required to be taken. The Rule 843 of the Bihar Police Manual reads as under:-

> *"Punishment for absence without leave*:- Wilful overstayal of leave or absence from duty without leave shall be treated as misbehaviour and after obtaining the explanation of the officer concerned proceedings shall invariably be drawn up and departmental punishment inflicted. If after explanation, it appears that a police officer had remained absent from duty due to any sufficient reason he shall be granted leave admissible to him for that period. If it is proved that he has violated the rules at his own will, he can be inflicted with any punishment as provided in Rule 824. The Police Officer who shall be absent from duty without permission shall be liable under section 29 of the Act V of 1861, as amended by section 9 of the Act VIII of 1895. Such action however, should be taken only in special circumstances. As a rule whenever an officer does not return in time on duty, enquiries shall be made by the Superintendent/Commandant within one week from the S.P. of his native district, and should there appear that the officer has not returned to his duties in time for good reasons he should be suspended and departmental proceeding should be undertaken as per rule."

Apart from the above, it appears from the original records that the petitioner has appended directive of the then Director General of Police issued vide memo no.5249 on 07.09.2011 to the Additional Director General of Police (Headquarter) Bihar, Patna, Additional Director General of Police (Law and Order) Bihar, Patna, all Additional Director General of Police Bihar, Patna, all Inspector General of Police/Deputy Director of Police, and all Superintendent of Police Bihar that in case overstay of leave or absence without leave,

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the inquiry is to be held by the Superintendent of Police, Home District of the concerned police personnel. Thereafter, that leave should be regularized. It is further clarified that unless such inquiry is held and it is not found that there was willful overstay by the police personnel, no departmental proceeding should be initiated.

However, the Rule 843 of the Police Manual has been considered by the Single Judge Bench of this Court in the order dated 29.07.2010 passed in C.W.J.C. No.7545 of 2004 holding as under:-

> "On a reading of the above rule or provision, referred to above, one fact which emerges according to the opinion of this Court is that the so called enquiry or verification about the whereabouts of a person absconding from duty is only to find out his status or may be the reason for his not reporting to the force after expiry of the period of the granted or authorized leave. The object of Rule 843 is not to hold an enquiry within an enquiry, but verify whether the person is still alive, dead or is absconding intentionally and whether there is any possibility of the person reporting back to the force or not. In the present case according to averment of the petitioner, he himself reported back to the authority after 393 days on 27.1.1995. If he had already reported back to the force then where was the occasion for the authority to request or direct the local Superintendent of Police/Commandant to hold an enquiry about the whereabouts the petitioner in terms of Rule 843 of the Police Manual. It is only after the petitioner reported to the force the enquiry was held, finding of guilt was recorded and punishment of dismissal order has been passed. Learned counsel for the petitioner has tried to bring some prescriptions of a doctor on record to show that his son was ailing and that was the reason which held him back."

Having given anxious consideration of the statement made on behalf of the parties and after examining the materials on record, in my mind, departmental proceeding does not pass the test of fairness, reasonableness and principal of natural justice as apparently no notice appears to have been received regarding initiation of any departmental proceeding. No memo of charge was served upon the

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petitioner before initiation of the departmental proceeding or even at threshold of the departmental proceeding at behest of the inquiry officer, the proceeding continued *ex parte* and witnesses were examined without granting opportunity of cross-examination. After recording of the statement of the witnesses, it appears that copy of memo of charge and the statement were provided to the petitioner on 22.06.1998. The receipt available at page 11 of the original records does not show that notice/acknowledgment singed by the petitioner discloses that a firm date of hearing was communicated to the petitioner. The matter does not end only here as it appears from the ordersheet that next date of hearing fixed on 11.06.1998 was 25.06.1998 but there is no order-sheet dated 25.06.1998 rather order appears to have been passed on 22.06.1998 for the reason best known to the inquiry officer/conducting officer.

In the aforesaid ground of the matter, in my view, one would have to come to irresistible conclusion that reasonable opportunity was not given to the petitioner to make out his case at any level. It is true that, after inquiry, the disciplinary authority has issued notice regarding his proposed dismissal from service which was received by the petitioner but he did not reply to it. However, having found the inquiry itself to be in blatant violation of the principle of natural justice, the order of dismissal as well as all the appellate orders would have to go. Accordingly, Annexure 5, 6, 9 and 10 are

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quashed and set aside. Te petitioner is to be reinstated and thereafter, the inquiry has to re-start *de novo*. The inquiry officer would fix the date of hearing and communicate the same to the petitioner on which date petitioner would have to appear. It is made clear that if petitioner does not respond to such notice even after reasonable opportunity is given to him then the inquiry officer would be at liberty to proceed *ex parte*. Petitioner would be granted all the opportunity to file documents in support of his case as also the opportunity to cross-examining the witnesses and also produce the defence witnesses.

Accordingly, this writ application succeeds.

The original file is returned back to the learned counsel appearing for the State.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
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