

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3826 of 2011

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Jagdish Prasad Yadav, S/O Late Sone Lal Yadav, Resident of Village Baikunthpur,
P.S. Sultanganj, Dist. Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Principal Secretary,
Department Of Home Government of Bihar, Patna.
2. The Secretary Department of Home (Jail) Govt. of Bihar, Patna.
3. The Deputy Secretary, Department Of Home (Jail) Govt. of Bihar Patna.
4. The Director (Administration) Department of Home (Jail) Govt. of Bihar,
Patna.
5. The Director General of Police, Bihar, Patna.
6. The Inspector General (Prison), Bihar, Patna.
7. Director Probation Jail Department Government of Bihar, Patna cum
Conducting Officer.
8. The Superintendent of Jail, Phulwarisarif, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 10-08-2017

Petitioner, who was working as a Jail Clerk in the Jail in question, was proceeded against departmentally with regard to illegal release of certain accused persons arrested in Criminal Case No.615 (2) 05 under Section 47(a) of the Excise Act and after a departmental enquiry was conducted, he was punished with forfeiture of four increments with cumulative effect. *Inter alia* contending that the departmental proceedings have been held without granting him proper opportunity of hearing and without considering his defence, the appeal was filed before the competent appellate authority, namely the Inspector



General of Prison and on the ground that there is delay in filing of the appeal, the Principal Secretary, Home Department, rejected the appeal of the petitioner on 21st November, 2008 and challenging these orders, this petition has been filed.

In the meanwhile, after filing of this petition in the 2011, supplementary affidavit has been filed which goes to show that for the same allegations as were levelled against the petitioner in the departmental proceedings, he was prosecuted in a criminal case and vide judgment passed by the Judicial Magistrate, 1st Class, Patna on 31st May, 2016 filed as Annexure-13 to the supplementary affidavit, the petitioner has been acquitted of the charges levelled against him.

That being the subsequent events that have taken place it is thought appropriate to remand the matter back to the Principal Secretary, Home Department, the appellate authority, who had dismissed the appeal on 21st of November, 2008 without considering it on merit and only on the ground of delay. In this connection, reference may be made to the decision of the Supreme Court in the case of **G. M. Tank v. State of Gujarat**, (2006) 5 SCC 446.

Keeping in view the facts and circumstances of the case, it is directed that on the petitioner filing a certified copy of this order along with detailed memorandum of appeal and the subsequent events which have resulted in acquittal as is detailed in supplementary affidavit filed,



the Principal Secretary, Home Department, the appellate authority, shall consider the appeal of the petitioner, take note of the subsequent events that have come on record and reconsider and decide the appeal on merit in accordance with law and shall not reject it on the ground of delay. On the petitioner filing the documents as directed hereinabove along with certified copy, the appellate authority shall decide the appeal within 60 days thereof. Petitioner is also granted liberty to raise all the grounds as are raised in the writ petition and the appellate authority shall consider them while deciding the appeal by a speaking order.

With the aforesaid, the writ petition allowed and disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2017
Transmission Date	

