

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1900 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 3882 of 2015

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Lalan Sharma, son of late Krishnadeo Singh, resident of village- Sihi, P.S- Dulhin Bazar, District- Patna, at present posted as A.S.I., P.S.- Piprahi, District- Sheohar.

.... Appellant/s

Versus

1. The State of Bihar
2. The D.G.P., Bihar, Patna.
3. The I.G., Tirhut Range, Muzaffarpur.
4. The D.I.G., Tirhut Range, Muzaffarpur.
5. The District Magistrate, Sheohar.
6. The S.P., Sheohar.
7. The S.D.P.O., Sheohar.
8. The B.D.O., Sheohar.
9. In-charge, Sheohar police station, District-Sheohar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate

For the Respondent/s : Mr. Manoj Kumar Sinha, A.C. to G.A.-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-03-2017

Re.:I.A. No. 8531 of 2015

The application is for condonation of delay of 32 days



in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay in filing the Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 8531 of 2015 is allowed and delay in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 1900 of 2015

Heard Mr. Rajesh Kumar, learned counsel appearing on behalf of the appellant and Mr. Manoj Kumar Sinha, learned counsel appearing on behalf of the State.

2. Seeking exception to an order dated 07.07.2015 passed by the Writ Court in C.W.J.C. No. 3882 of 2015 this appeal has been filed under Clause 10 of the Letters Patent.

3. Appellant was working as Assistant Sub Inspector of Police and vide order dated 01.02.2013 the Superintendent of Police, Sheohar imposed a punishment of one black mark entry with stoppage of one increment for a period of six months. The appeal filed having been dismissed, the matter went to the learned Writ Court and before the Writ Court challenge was made to the departmental inquiry conducted primarily on the ground that two of the departmental witnesses who were examined were not permitted to be cross-



examined.

4. It is the case of the appellant again before us that the inquiry has been held in violation to the principles of natural justice and proper opportunity of defence has not been granted. In support of the aforesaid contention, it is pointed out that two of the witnesses were not offered for cross-examination and thereby prejudice has been caused to the appellant.

5. It was argued on behalf of the appellant that the appellant was holding a static post and could not be directed to move with the procession.

6. We have heard learned counsel for the appellant and on going through the detailed order passed by the Writ Court, we find that the matter was pending before the learned Writ Court. The original records of the departmental inquiry was perused by the Writ Court and it was found that the appellant was working as a Sub Inspector of Police and in a procession which was being held and which was to pass through a sensitive area instructions were issued to the appellant to accompany the procession so that when the procession passes through the sensitive area, no law and order situation could create. It seems that insubordination to the order passed, the appellant, instead of accompanying the procession, directed a Chowkidar to accompany the procession and, therefore, the



impugned action was taken.

7. The learned Writ Court in Paragraphs 7 and 8 has, after going through the original inquiry record, found that the two witnesses who were not permitted to be cross-examined were only formal witnesses who only appeared before the Inquiry Officer and proved the orders of deployment and direction passed by the superiors. Finding that in denying opportunity to cross-examine these witnesses have not caused prejudice to the appellant, the learned Writ Court has refused to interfere into the matter.

8. We are of the considered view that the learned Writ Court has not committed any error. Nothing is brought to our notice on the basis of which it can be held that the cross-examination of each witness is a requirement of the statutory rule and thereby even if no prejudice is caused, the inquiry stands vitiated. In this case, the appellant has only raised a contention before the Writ Court to say that non-cross-examination of these witnesses has caused prejudice to him but was unable to demonstrate or plead any prejudice before the learned Writ Court and the learned Writ Court under these circumstances having dismissed the writ petition we find no error in the same warranting reconsideration. The order passed by the learned Writ Court is in accordance with the law laid down by the Supreme Court in the case of **State Bank of Patiala and others Vs. S.K.**



Sharma-A.I.R. 1996 Supreme Court 1669 and, therefore, we see no error in the same warranting reconsideration.

9. Merely because the appellant was holding a static post and if the requirement of administration warranted, appellant could be deputed to certain duty and administrative discretion in this regard has been exercised by the Superintendent of Police, we see no reason to interfere into the said administrative decision exercising our extraordinary jurisdiction in a petition under Article 226 of the Constitution of India.

10. The Letters Patent Appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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