

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1392 of 2013

IN

Civil Writ Jurisdiction Case No. 5120 of 2003

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Kaushal Kishore Thakur, Son of Late Bindeshwar Thakur, resident of Village-
Karmachandi Hassainganj, P.S.- Ekram, District- Begusarai

.... Appellant/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. The D.G.-Cum-I.G. Police, Bihar, Patna
3. The I.G. of Police, Muzaffarpur Zone.
4. The Deputy Inspector General of Police, Saran Range, Chapra
5. Superintendent of Police, Siwan

.... Respondent/s

With

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Letters Patent Appeal No. 1417 of 2013

IN

Civil Writ Jurisdiction Case No. 4857 of 2003

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Shashi Kumar Singh, S/O Late Jamadar Prasad Singh, Resident of Village-
Madhavpur, P.S- Aurai, District- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar
2. Superintendent of Police, Siwan
3. Deputy Inspector General of Police, Saran at Chapra.
4. Director General of Police, Bihar, Patna

.... Respondent/s

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Appearance :

(In LPA No.1392 of 2013)

For the Appellant/s : Mr. Kamal Kishore Mishra, Advocate

Mr. Krishna Narayan Jha, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG-3

Mr. Ujjwal Kumar Sinha, AC to AAG-3

(In LPA No.1417 of 2013)

For the Appellant/s : Mr. Kamal Kishore Mishra, Advocate

Mr. Krishna Narayan Jha, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG-3

Mr. Ujjwal Kumar Sinha, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 21-11-2017

As both the appeals arise out of a common order
passed on 01.08.2003 by the Writ Court in C.W.J.C. No. 4857 of 2003
and C.W.J.C. No. 5120 of 2003, they are being disposed of by this



common order.

2. The appellants herein were working as constables and were posted in the district of Siwan. It is seen and it is the allegation against them that on 20.03.1997, an incident took place where the appellants were assigned duty to assist the Executive Magistrate in taking over possession of a cold storage. It is seen that when the petitioners reached the spot and when the Executive Magistrate did not arrive, the petitioners were returning back to the police station and on their way back they stopped in the market, consumed liquor and entered into some altercation and argument with the local people and owner of the shop. In the process, it is said that the local villagers got annoyed with them and started chasing them. They ran away into the police station and when the villagers tried to enter the police station, it is said that the appellants Shashi Kumar Singh and Kaushal Kishore Thakur took out fire-arms from the police station and fired in the air to disperse the crowd.

3. On the aforesaid set of allegation, a charge-sheet was issued, a departmental enquiry was conducted and based on the finding, based on the departmental enquiry, the appellants were dismissed from service. The appeal filed having been rejected, the writ petitions were filed and in the writ petitions, the following grounds were raised: (a) the enquiry was not properly conducted, (b) before imposing the punishment and along with second show-cause,



copy of the enquiry report was not furnished to the petitioners and (c) they have been punished, even though the charges are not proved, based on the evidence that came on record before the Writ Court. The Government filed a detailed counter affidavit, refuted the aforesaid contention and in the case of Shashi Kumar Singh (appellant) it was stated that the enquiry report was handed over to him, whereas in the case of Kaushal Kishore Thakur (appellant) it was admitted position that enquiry officer's report was not furnished to him. Be that as it may, the learned Writ Court considered the submission, took note of the law laid down by the Hon'ble Supreme Court in the case of **Managing Director, ECL Hyderabad and others Vs. B. Karunakar and others**, reported in (1993) 4 SCC 727 and recorded a finding holding that even if the enquiry report was not submitted or supplied to the delinquent employees, it did not cause any prejudice to them, as they have admitted use of fire-arm and based on this admission the learned Writ Court found that as no prejudice has been caused and as there is admission of the charges with regard to use of fire-arm refused to interfere in the matter.

4. Having heard the learned counsel for the parties at length and on going through the records, we are of the considered view that in dismissing the writ petition on the grounds raised, as indicated hereinabove, the learned Writ Court has committed a grave error of law, which cannot be approved by us. As far as the finding



recorded to say that the petitioners have admitted use of fire arm and, therefore, in view of this admission there was no prejudice caused to them, in fact, is a misconceived finding recorded, without taking note of the relevant material on record, in fact, by taking note of the aforesaid admission and applying principles of Section 106 of the Evidence Act, the learned Writ Court has shifted the onus of proof from the departmental authorities to the delinquent employees and held that they should have proved the defence of using the fire-arm, as admitted by them.

5. In our considered view, this approach adopted by the learned Writ Court in dealing with the matter was not proper. It was defence of the petitioners in the departmental proceeding that when they were being chased and when they entered the police station, when the mob was trying to attack the police station, the petitioners in defence and in discharge of their duties, used the fire-arms. Use of the fire-arm was explained by them not by way of admission of the allegations levelled, but by way of justification with regard to the action taken by them in discharge of their duties, so far it pertains to protection of the police station and Government property. In our considered view, this being the defence and the explanation of the petitioners, the burden was on the department to prove that the use of the fire-arm was unauthorized, not permissible and in an illegal manner. This onus on the prosecution could not be shifted on the



delinquent employees merely by holding that they have admitted the guilt levelled against them. In fact, what was stated by the petitioners cannot be construed as an admission of the guilt, when, in fact, it was their defence and explanation to the allegations levelled against them and by misconstruing this to be an admission, a grave error has occurred, which is an error of law, which has to be corrected, as this amounts to violation of the principles of natural justice and added to this non-supply of the report of the enquiry officer, in our considered view, caused prejudice to the petitioners inasmuch as they would be handicapped in replying to the show-cause notice issued to them without the findings recorded and the reasons for the finding being conveyed to them by supplying a copy of the enquiry report.

6. That being so, in our considered view, the entire action taken against the petitioners from the stage of enquiry has to be recommenced. That is the law laid down by the Supreme Court relied upon by the learned counsel for the petitioners i.e. in the case of **Managing Director, ECL Hyderabad and others** (supra).

7. Accordingly, we allow these two appeals in part, set aside the order passed by the learned Writ Court and the order passed by the disciplinary authority and appellate authority and remand the matter back to the disciplinary authority with the following directions:



8. The disciplinary authority shall supply copy of the enquiry report to the petitioners along with the show-cause notice and proceed with the enquiry in accordance with law from the aforesaid stage.

9. The question of regularization of the intervening period and grant of financial benefit for the intervening period shall be dependent upon the final outcome of the enquiry, now to be conducted in pursuance to the aforesaid order and the same shall be governed by the principles laid down in the case of **Managing Director, ECL Hyderabad and others** (supra). The enquiry proceedings now be concluded within a period of three months from the date of receipt/production of certified copy of this order.

10. With the aforesaid observations, these appeals are allowed in part.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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