

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10321 of 2014

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Parmeshwar Paswan, son of Late Ram Kishun Paswan, resident of Village-
Pahalam, P.O.- Paharpur, P.S.- Salkhua, District- Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General-cum-Inspector General of Police, Bihar, Patna
3. The Deputy Inspector General of Police, Munger Region, Munger
4. The Superintendent of Police, Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
For the Respondent/s : Mr. H.S. Roy, AC to AG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 13-12-2017

Heard counsel for the petitioner and the State.

2. The petitioner has challenged the order of his dismissal dated 12.01.2013 passed by the Superintendent of Police, Munger and the order dated 30.06.2013 bearing Memo No. 1153 passed by the DIG, Munger dismissing the appeal. He has also challenged the dismissal of the memorial dated 12.12.2013 by the Director General, Bihar, Patna.

3. The petitioner being a constable in the Munger District Police was served with a charge memo dated 12.07.2011 by the Superintendent of Police, Munger. The substance of the charge is that he was given command no. 547412 dated 06.06.2011 and under the



said command petitioner was obliged to escort one prisoner namely, Amit Mandal from Munger Jail to PMCH for his treatment. He was required to escort the said under trial prisoner along with four other constables and one Hawaldar. It is alleged in the charge memo that pursuant to the said order he was late by 35 hours in reporting to the Munger jail for executing the command.

4. Charges were also levelled to the extent that instead of keeping the said prisoner at the prisoner ward in PMCH, the petitioner, along with other five members of the police party, the under trial prisoner, his mother and wife stayed unauthorizedly from 08.06.2011 till 16.06.2011 in different rooms of Janta Hotel, G.M. Mitra Road, Patna. It is on 16.06.2011 the said prisoner Amit Mandal, is said to have absconded from the said Hotel at Govind Mitra Road, Patna at about 3 P.M. Information regarding the said prisoner having absconded was communicated to the authorities after much delay on the next day i.e., on 17.06.2011.

5. The petitioner thereafter, returned to Munger and deposited the Government rifle, cartridges and the towing (rope) in good condition which showed that the same were not used by the petitioner and by members of the escort party for ensuring that the said prisoner did not abscond. The petitioner filed his show cause Annexure 4 of the writ petition where after the order of dismissal



dated 21.10.2011 was passed by the Superintendent of Police, Munger. Petitioner's appeal before the DIG, Munger was also dismissed. The petitioner's memorial against the said appeal was allowed vide order dated 12.11.2012 passed by the Director General of Police, Bihar and the matter was remanded to the Superintendent of Police, Munger. While directing for reinstatement of the petitioner it was also directed to complete the departmental enquiry after giving a copy of the enquiry report to the petitioner. Pursuant to the enquiry report having been served the petitioner had submitted his response which is Annexure 6, of the writ petition.

6. Relying on the same counsel for the petitioner has submitted that the petitioner had requested to examine the log book of the vehicle used for transporting the said prisoner along with the escort party from Munger Jail to Jamalpur Station from where he was taken to Patna and also to examine the driver of the said vehicle. He also submits that he had requested that the Doctor at Patna, should be examined so that he could testify the fact that the said prisoner had to be kept at Janta Hotel as accommodation was not made available to keep the prisoner at the prisoner ward of the PMCH as he was being treated as outdoor patient. From the averments made in paragraphs 8-11 of the petitioner's representation against the enquiry report, the admitted position that emerges is that the prisoner was kept at the



Hotel close to the PMCH. This is itself, in the opinion of the Court enough to show the complicity of the petitioner and the member of the escort party as that they did not even inform the authorities at Munger, regarding the non-availability of accommodation in the prisoner ward at PMCH, let alone seeking any guidelines from the competent authority at Munger.

7. It is also an admitted fact that the said prisoner fled away from custody on 16.06.2011 and that the information was given on the next day 17.06.2011 to the police at Patna regarding the said prisoner's absconding.

8. The petitioner in the said representation tried to explain that it was under compelling circumstances that the prisoner was kept in the Hotel as there was no availability of accommodation at the prisoner ward at PMCH, Patna. He has also tried to explain some delay due to compelling circumstances in reporting to the Munger Jail pursuant to the command dated 06.06.2011 bearing memo no. 547412.

9. This appears to be a gross case of dereliction of duty. The records of the Hotel have also been examined which shows that other rooms in the said Hotel were booked prior to the petitioner's arrival, by the mother and wife of the prisoner.

10. Such gross dereliction of duty and the act of



indiscipline cannot be countenanced by member of the police service where duty is to protect the public safety with discipline.

11. The above noted fact which constitute the charges, have been admitted by the petitioner. From paragraph nos. 8-11 of his representation (Annexure 6). He tried to explain the same by pleading compulsion or by highlighting the fact that whatever was done was a collective decision. By referring to the other five members of the escort party the petitioner cannot be permitted to absolve himself from the liability of ensuring the undertrial prisoner's transportation safely and in accordance with law.

12. The counsel for the petitioner has candidly accepted that similar punishment has been meted out to all other members of the escort party.

13. Having noticed the factual position, as above, this Court would confine itself to the decision making process. Finding some procedural lapse the Memorial of the petitioner, arising out of the earlier order of dismissal dated 21.10.2011 and rejection of appeal dated 06.01.2012, was allowed vide order dated 12.11.2012 of the Director General of Police, Bihar. Pursuant thereto the petitioner was reinstated and the matter was remanded to the Superintendent of Police, Munger to complete the proceedings after furnishing copy of Enquiry Report and opportunity at that stage.



14. Annexure 7 dated 12.01.2013 is the order of the S.P. Munger, Annexure 9 dated 30.06.2013 is the order passed by the DIG, Munger dismissing the petitioner's Appeal against the order of dismissal and Annexure 10 dated 12.12.2013 is the order passed by the Director General of Police, Patna Bihar rejecting the Memorial filed by the petitioner.

15. The said three orders which are sought to be impugned by the petitioner are the outcome of a procedure after affording the petitioner sufficient opportunity and in the backdrop of the petitioner's admissions regarding the charges as noticed above. The orders are well considered orders assigning reasons and similar punishment has been meted out to the other five members of the escort party. The entire procedure inspires confidence and is in compliance with the 'Principles of Natural Justice and fair play and warrant no interference by this Court.

16. The writ petition is dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	28.11.2017
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