

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19822 of 2011

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Peeyush Kant, Son of Sri Samrendra Singh, Resident of Lal Bazar, Bettiah, Police
Station - Bettiah Town, District - West Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Home (Police) Department, State Of Bihar, Old Secretariat, Patna
3. The Director General Of Police, Bihar At Patna
4. The Director General Of Police (Provision), Bihar At Patna
5. The Inspector General Of Police, Special Branch, Bihar, Patna
6. The Deputy Inspector General Of Police, Technical Services, Bihar, Patna
7. The Superintendent Of Police (G), Special Branch-Cum-Conducting Officer,
Bihar At Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Bihar Singh, Advocate

For the Respondent/s : Mr. Ravi Verma, AC to GP 9

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CORAM: HONOURABLE THE CHIEF JUSTICE

CAV JUDGMENT

Date: 13-09-2017

Challenging the punishment order Annexure-4 dated
09.10.2007 directing for withholding of one increment for one year
with two black marks to be entered in the service record of the
petitioner and the subsequent order Annexure-9 dated 26.06.2008
passed by respondent no.3 enhancing the punishment of reversion



from the post of Inspector to the post of Sub Inspector for two years, and the order Annexure-10 dated 12.11.2008 dismissing the appeal filed by the petitioner, this writ petition has been filed under Articles 226 and 227 of the Constitution of India.

2. Petitioner was appointed as Sub Inspector in the Police Department on 21.07.1980. He was subsequently promoted as Inspector and in the year 2007 he was posted as Inspector, Special Branch, Bihar, Patna. It seems that when a Division Bench of this Court was hearing Death Reference No. 5/2005 (State of Bihar vs. Dhananjay Prasad), it transpired that the petitioner in the year 1994 was working in a Police Station within the jurisdiction of village Saidpur, and in an incident that took place in the said village, the petitioner in his capacity as Assistant Sub Inspector and Investigating Officer is said to have recorded the statements of certain persons on 12.07.1994 and also recorded a *Fardi* in his own handwriting with his own pen. However, when he appeared for giving statement before the trial court, it seems that he made statement to say that he had recorded the statement in his own handwriting with his own pen, but when the appeal was being heard by the High Court, it was apparent that he had not recorded the *Fardi* or statement in his handwriting rather he had dictated it to another A.S.I. Wazi Ahmad, who had recorded the *Fardi* in his handwriting. The petitioner was, therefore, summoned to the



High Court on 07.05.2007 and his statement was recorded by the Division Bench wherein he gave statement contrary to the one which was given in the trial court. The Division Bench, therefore, while disposing of the Criminal Appeal bearing Nos. 284 of 2004 and 286 of 2004 recommended for taking departmental action against the petitioner for his dereliction of duty amounting to perjury for giving false statement in the court of law. The Additional Advocate General having communicated the decision of this Court, after a departmental enquiry into the matter the impugned action has been taken and challenging the aforesaid action, this writ petition has been filed.

3. During course of hearing of the writ petition at length, learned counsel for the petitioner made two-fold submission and only argued these two grounds before me. The first ground was that article of charges were not framed or served upon him on the contrary a draft article of charge along with a communication made by the Advocate General was served. This, according to the petitioner, was not proper and the entire enquiry stands vitiated on this ground. The second ground was that the enquiry report was never served on the petitioner. The petitioner received the enquiry report only when he filed the writ petition and, therefore, on these two grounds challenge is made to the departmental proceeding.

4. However, learned counsel appearing for the



respondents as directed by this Court has produced the entire original file of the enquiry along with the statement of witnesses and other materials to show that the departmental enquiry was properly conducted and the petitioner cannot now take advantage of the aforesaid allegations made at the time of hearing.

5. Even through the petitioner refers to the charge-sheet issued to him which is available on record is shown as a draft memorandum of charge but in the original enquiry file available from Page 39 onwards are the statement of article of charges and imputation levelled against the petitioner. In a departmental proceeding, a charge-sheet is issued to a delinquent employee so that he can understand the allegation made against him and can rebut the allegation and defend himself. Merely on the technical ground that charge was not in the form of an article but it was only in the form of a draft memorandum, interference cannot be made by this Court until and unless it is shown that non-supply of the charge-sheet has resulted in grave prejudice to the petitioner. The issue of non-supply of enquiry report or the charge-sheet cannot be a sole ground for holding the enquiry to be vitiated until and unless prejudice caused is not pleaded and demonstrated. That is the law laid down by the Supreme Court consistently and in this regard reference may be made to the judgment rendered in the case of **S K Singh vs Central Bank of**



India [1997 (1) LLJ 537 (SC)] and State Bank of Patiala vs. S K Sharma (AIR 1996 SC 1669). It is a well settled principle of law that until and unless statutory rules are not shown to be violated mere denial of opportunity cannot be a ground for interference with the order of punishment until and unless prejudice caused due to the objection raised is not pleaded and demonstrated in the writ petition. If the case in hand is analyzed in the backdrop of the aforesaid requirement of law, it would be seen that the allegation against the petitioner in the article of charge framed against him and available at page 39 of the enquiry file is that the petitioner was posted at Barh Police Station and Barh PS Case No. 261 of 1994 he recorded *Fardi*. When he was examined as Prosecution Witness No. 4 on 8th December, 1997 in Sessions Trial No. 686 of 1995. After the cross-examination was conducted in part on 08.12.1997, it was adjourned to 18.12.1997. Thereafter the petitioner deliberately evaded his appearance for a period of 3 ½ years till 21.07.2011. Instead of repeated attempts made by the trial court the petitioner did not appear for his examination. Therefore, first allegation was that he evaded appearance before the trial court for 3 ½ years. The second allegation was that he gave contrary statement when he was examined in the trial court and when he recorded a statement in the High Court. It was held that it amounts to gross indiscipline, misconduct and serious



dereliction of duty and act of perjury in the charge-sheet said to have been issued to the petitioner and it has been filed by the petitioner as Annexure-1 in the writ petition at page- 28 even though it is titled as Draft Memorandum of Charges. If the details of the allegations contained therein are taken note of it is seen that it is nothing but repetition of the same imputation which has been served on the petitioner except that it is in the form of a communication made by the Advocate General. If the petitioner did not understand the aforesaid allegations levelled against him or he had any difficulty in the matter, he should have objected. On the contrary, available on record is Annexure-A, at Page-55, which goes to show that the petitioner simply stated that an error has been committed by him in the matter of recording different statements in the Sessions Trial and before the High Court, this was because of slip of tongue and in fact the petitioner seems to have admitted the allegations levelled against him. At Page-57 Annexure-3 is a detailed statement/defence explanation of the petitioner submitted on 27.08.2007. On going through the same it is seen that nowhere does he say in this statement that he has not received the charge-sheet or has not understood the allegations levelled against him. On the contrary, from Paragraph-2 onwards he narrates the incident as to how the *Fardi* was recorded, he admits that he dictated the *Fardi* to Assistant Sub Inspector Wazi Ahmad who



had recorded the same and in Paragraph-4 he admitted that he gave his evidence on 08.12.1997 in Sessions Trial No. 686 of 1995 and his statement was recorded after 40 months which was a slip of tongue and an error committed by him and he admits that he made a wrong statement that *Fardi* was in his own handwriting and by his own pen and in his signature.

6. From the aforesaid detailed explanation given by him, and thereafter the statement recorded by the Enquiry Officer which is on the same line and thereafter when he filed the appeal before competent appellate authority, the same stand taken by him and therefore it is a case when the petitioner all along took the stand that he was a slip of tongue and he had not given a deliberate or wrong statement.

7. The petitioner was a responsible Police Officer and while investigating and recording statements of the witnesses in respect of a criminal case, i.e. for offence u/S 302, IPC, trial of which has resulted in award of death sentence to some of the accused persons, he should have given correct statement and the act of the petitioner in recording the statement given in a court of law in casual manner which would have resulted in hardened criminal getting away scot-free is a serious act and stern action was therefore taken against the petitioner, I see no reason to make any indulgence on the ground



that charge-sheet and the enquiry report were not given to the petitioner for the simple reason that except for making such bald statement the petitioner does not demonstrate before this Court as to how for non-supply of the charge-sheet as alleged or the enquiry report prejudice was caused to him, how his defence or right to file an appeal was adversely affected and how the same would have materially affected the final outcome. On the contrary, the material available on record goes to show that the petitioner was aware of all the facts, the charges were very well known to him and he has given his defence after explaining each and every aspect of the matter.

8. Accordingly, I find that no prejudice has been caused to the petitioner, departmental enquiry has been properly conducted, witnesses have been examined and based on the same findings have been recorded by the departmental authority and the impugned punishment imposed. Therefore, on the grounds canvassed no case is made out for interference. That apart, surprisingly, the petitioner does not give any explanation either in reply to the charge-sheet or before the Enquiry Officer or before this Court as to why when he was required to appear for further cross-examination on 18.12.1997 he did not appear for 3½ years and appeared for recording evidence only on 21.07.2001, as a result of which in such a case trial was delayed by more than three years. The cumulative effect of all



this act of the petitioner does not entitle him to seek any indulgence into the matter invoking extra-ordinary jurisdiction under Article 226 of the Constitution.

9. I find no merit in the writ petition. The writ petition stands dismissed.

(Rajendra Menon, CJ)

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AFR/NAFR	NAFR
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