

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15942 of 2012

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Passing Lama, son of Sri Man Singh Lama, resident of Village Pipall, P.O. Espore, P.S. Nagari District Darjeeling

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Director General of Police, Bihar, Patna
3. The D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur
4. Commandant, B.M.P. 6, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Ram Hriday Prasad

Ms. Maruti Kumari, Advocates.

For the Respondents : Mr. Hari Shankar Roy, AC to AG

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-09-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing the order of dismissal dated 29.06.2008 passed by the Commandant, B.M.P. 6, Muzaffarpur (Annexure-4); the order of the D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur dated 09.01.2009 (Annexure-5) rejecting the appeal; the order of the Director General of Police, Bihar, Patna dated 25.02.2011 (Annexure-8) rejecting the memorial; and for grant of consequential benefits.

3. The short facts of the case according to the petitioner are that he was appointed as Constable in B.M.P. 6, Muzaffarpur on 14.04.1971 and worked with good service records and was decorated several times. He was promoted to the rank of Hawaldar in 1999. Subsequently, charges came to be framed against the petitioner on 13.10.2006 (Annexure-1), *inter alia*, alleging that while he was deputed as in-charge of main arsenal as well as training arsenal on 27.08.2006



at about 7.00 a.m., the petitioner and his assistant Hawaldar Anjora Kullu unlocked the training arsenal to find 4 A.K. 47 rifles and one Insas rifle missing, about which information was given to S.I. of Police (Arms) Sri Duryodhan Ram and Inspector of Police, Sri Junul Topanno and as such the petitioner had committed gross negligence in performance of his duty. Departmental proceedings were started against the petitioner. The inquiry officer exonerated the petitioner on charge nos. 1, 2 and 3 but found him guilty on charge nos. 4 and 5. A detailed show cause was filed by the petitioner denying the charges but however the impugned order of dismissal dated 29.06.2008 was passed against the petitioner which was upheld in appeal by the D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur, as well as in the memorial by the Director General of Police, Bihar, Patna.

4. Learned counsel for the petitioner submits that the impugned orders are bad in law, arbitrary and illegal. The respondents have proceeded on the erroneous basis that the petitioner was in-charge of the main arsenal and the training arsenal on the date when the arms were found missing. This was an error of record as evident from the inquiry report itself. It is further submitted that the petitioner has been visited with unduly harsh punishment of dismissal on the basis of a foundational error of fact that he was the in-charge of the arsenal, whereas the person who was in fact in-charge of the arsenal, namely, Sri. Duryodhan Ram, has been let off without any punishment. The 4 Hawaldars and 16 Constables deputed for the safety of arsenal on 25.06.2008 and 26.06.2008 who were also found to have committed negligence and slackness have been awarded punishment of one/two years increment being withheld, whereas the petitioner has suffered



the harsher punishment of dismissal though being similarly situated. It is therefore submitted that punishment inflicted upon the petitioner is unduly harsh and disproportionate in the circumstances of the case.

5. Learned counsel for the State opposes the writ petition and invites attention to the inquiry report to submit that in fact it was the petitioner who was the in-charge of the arsenal and hence he cannot claim his situation to be similar to those other Hawaldars and Constables who have been inflicted with the lesser punishment of withholding increments.

6. Having heard the parties and on a consideration of the materials on record, this Court finds considerable merit in the writ petition. It would appear that the authorities have completely misdirected themselves in treating the petitioner to be the person who was in-charge of the main arsenal and the training arsenal when the arms went missing on 27.08.2006. The specific contention of the petitioner in the writ petition with regard to such error of record has not been controverted by the respondents in their counter affidavit, except a bald statement in para-4 thereof that vide Force Order No. 1918/2001 dated 03.11.2001, he was deputed as in-charge of main arsenal and training arsenal of B.M.P. 6, Muzaffarpur. The submission of learned counsel for the State that according to the question and answer of the inquiry report wherein the petitioner has admitted in his answer that he was in-charge of the arsenal (at page-18 of the writ petition), is clearly based on a misreading of the inquiry report. As a matter of fact, this was the answer given by Sri Duryodhan Ram in reply to the question asked by the Conducting officer. This is clear also from the specific finding at page-21 of the writ petition wherein it has



been stated that on being confronted with Ext-4, Sri Duryodhan Ram accepted and admitted that he was in-charge of the arsenal. The enquiry officer has thus categorically concluded that Sri Duryodhan Ram was in-charge of the arsenal and not the petitioner.

7. The petitioner has thus arbitrarily and without valid basis been treated as the in-charge of the arsenal at the relevant time, and in the process, the finding in the inquiry report to the contrary that it was Sri Duryodhan Ram, who was in fact the in-charge of the arsenal, has been completely ignored. The petitioner's specific plea in his show cause pointing out that the inquiry officer had clearly found that the petitioner had been posted as hawaldar and not the in-charge of the arsenal in terms of Force Order No. 1918 aforesaid, and so also that the lock of the arsenal had first been opened on 27.08.2006 by Assistant Hawaldar Anjor Kullu in the presence of Kameshwar Tiwari and not by the petitioner, has also been ignored. Failure to consider the materials on record leads to arbitrariness and vitiates the decision-making process which requires to be corrected in judicial review. The petitioner's appeal and memorial have also been dismissed without going into this crucial aspect of the matter. It is therefore evident that the authorities have proceeded on the basis of an error of fact which went to the root of the matter and have thus imposed the unduly harsh and disproportionate punishment of dismissal upon the petitioner, apart from subsequently having also recovered an amount of Rs. 33,751/- by way of cost of arms and ammunition in terms of Rule 1108 of the Bihar Police Manual, 1978. The impugned order cannot be sustained also in view of the fact that Sri Duryodhan Ram, who was the in-charge of the arsenal, has been let off without punishment and other



Hawaldars and Constables have been inflicted with punishment only of withholding of increments.

8. In the above view of the matter, the impugned order of dismissal dated 29.06.2008 (Annexure-4) as well the appellate order dated 09.01.2009 (Annexure-5) and the order of the Director General of Police dated 25.02.2011 (Annexure-8) are hereby quashed. The petitioner shall be entitled to all consequential benefits.

9. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
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