IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6930 of 2017

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Randhir Kumar Singh S/o- Sri Chakardhar Prasad Singh, at present residing at Mundeshwary Aata Smriti Apartment, Flat No.- 202, Buddha Colony, Town & District- Patna. At present posted as Inspector, Excise, Patna, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, New Secretariat, Vikash Bhawan, Patna.
3. The Commissioner, Excise, Bihar, New Secretariat, Vikash Bhawan, Patna.
4. The Collector, Patna.
5. The Assistant Commissioner, Excise, Patna, Collectorate, Patna.
6. The Vijay Kant Thakur, Inspector, Excise, Sheohar, District- Sheohar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Purnendu Singh, Adv.

For the Respondent/s : Mr. Ajay Kumar Sharma, AC to PAAG1

For respondent no.6 : Mr. Abhinav Srivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-07-2017

Heard Mr. Purnendu Singh, learned counsel appearing for the petitioner, Mr. Ajay Kumar Sharma, AC to PAAG-1, for the State and Mr. Abhinav Srivastava, learned counsel for respondent no.6.

A detailed order stands recorded on 6.7.2017 discussing the peculiarity of the issue in dispute and the strange decision of the Excise Department to transfer the petitioner. In a case of alleged insubordination by a Constable, facing enquiry for such act, merely because an altercation involves two persons, that the petitioner has been transferred out of Patna to a distant district of Sheohar for balancing equity.

The detailed order passed by me on 6.7.2017 itself is sufficient to uphold the grievance raised through the present petition. It is because the order of transfer impugned at Annexure 23 while transferring the petitioner from Patna to Sheohar alongside transfers respondent no.6 to Patna that he was noticed in the proceedings. On appearance Mr. Srivastava informs that although by the same order, impugned at Annexure 23, the respondent no.6 has been transferred to Patna but the transfer is not in place of the petitioner nor he is the reliever of the petitioner. He further informs that there are two vacancies yet existing on the post of Inspector, Excise at Patna.

The only defence taken to support the transfer of the petitioner as per Mr. Sharma, learned State Counsel, is discussed in paragraph 8 of the counter affidavit, which as I have observed, is more to satisfy the Constable than the department themselves. In my opinion, once the department has thought it proper to initiate a disciplinary proceeding against the Constable concerned coupled with the enquiry report submitted by the Assistant Commissioner to the Excise Commissioner at Annexure 21 which confirms that it is the Constable himself who came at the residence of the petitioner, where the alleged altercation took place, there was no occasion to transfer the petitioner for the said incident. However, since the matter is pending enquiry, I would not express opinion on the merits of the dispute. The reasons assigned in paragraphs 6 to 8 of the counter affidavit filed in the proceedings, is absurd for more than one reason. Firstly the incident did not take place at the airport rather it took place at the residence of the petitioner and secondly, the report at Annexure 21 does not prima facie suggest that the petitioner instigated the incident.

Apart there from the documents on record suggesting that the petitioner needs intensive medical care, it is rather an arbitrary decision to transfer him to a distant place where he cannot pursue his medical treatment. It is again not in dispute that the petitioner suffered injury in discharge of official duty requiring intensive medical care and which perhaps was a reason for his transfer to Patna so that he can pursue his medical treatment.

For the reasons so discussed, I find the order bearing Memo No. 2169 dated 13.4.2017, impugned at Annexure 23, in so far as it concerns the writ petitioner, cannot be upheld and is accordingly quashed and set aside.

By virtue of the order aforementioned the petitioner gets restored to his position at Patna and since according to Mr. Srivastava, learned counsel for the respondent no.6, and not disputed that there are two vacant post of Inspector (Excise) at Patna, it is entirely at the discretion of the department to consider his static posting at Patna at an appropriate place keeping in view the medical condition of the petitioner.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2017
Transmission Date	NA