

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8415 of 2017

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Sanjay Kumar Singh S/o - Daroga Singh R/o - Village + P.O. - Pipra Kalan, P.S. -
Narahi, District - Baliya (U.P.).

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police (Headquarter), Bihar, Patna.
5. Additional Secretary, Home Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Adv.
For the Respondent/s : Mr. Prabhat Kr. Verma, AAG-3
Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-08-2017

Heard Mr. Siddhartha Prasad, learned counsel appearing for the petitioner and Mr. Prabhat Kumar Verma, learned AAG-3, who appears alongwith Mr. Suman Kumar Jha, AC to AAG-3.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission.

The petitioner, inter alia, prays for issuance of a writ in the nature of Certiorari for quashing the order bearing Memo No. 3275 dated 20.4.2017 passed by the State Government in its Home (Police) Department, whereby the petitioner has been visited with penalty of Censure as well as stoppage of three annual increments with



cumulative effect. A copy of the order of penalty is impugned at Annexure 18 to the writ petition.

The petitioner filed a review application under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') and which has also been rejected by the State Government vide order bearing Memo No. 5332 dated 3.7.2017, impugned at Annexure 24 to I.A.No. 5156/2017 filed on 19.7.2017.

The foundation for the proceedings in question rests on the charge memo, a copy of which has been placed on record vide Annexure 22 to the writ petition as communicated vide Memo No. 1339 dated 21.2.2013. The charge memo reflects four charges against the petitioner, mainly revolving around the unnatural death of an accused, namely, Manoj Yadav and since the allegation was leveled by the family members of the deceased that the death was caused due to atrocities of the police, that this petitioner who at the relevant time held the post of Deputy Superintendent of Police, Nawadah that in the supervisory capacity, he was suspectedly held to be involved in the said crime. A plain reading of the charge memo at Annexure 22 would confirm that except that the role of the petitioner in context with four charges was found to be suspicious, there is nothing to connect the petitioner with the death of the accused Manoj Yadav. The fifth



charge (Anga), charges the petitioner of not performing his duty in his supervisory role to its fullest extent, rather the petitioner's act reflected negligence and dereliction of duty.

The charge memo exclusively relies upon the joint report of the Principal Secretary, Home Department and the Addl. Director General of Police (Headquarters). No other form of oral evidence or documentary evidence has been relied upon to support the charge.

The petitioner on his part responded to the charge denying each of them word to word and his reply is present at Annexure 7. The petitioner at the same time also demanded the documents vide Annexure 3, but according to him, it was not supplied. The death of Manoj Yadav led to institution of a criminal case as well, giving rise to Nawada P.S. Case No. 29/2012 registered on 15.1.2012. The final form (charge sheet) was submitted after investigation on 22.1.2015, a copy of which is present at Annexure 8 and the Superintendent of Police has exonerated the petitioner from any role whatsoever in the death of Manoj Yadav. The report of the Superintendent of Police, Criminal Investigation Department, dated 15.1.2015 is present at running Page-76 of the proceedings. The final form has been accepted by the Chief Judicial Magistrate, Nawadah at running page 81, meaning thereby the petitioner has not been sent up for trial and the order of the Chief Judicial Magistrate. In fact the petitioner has been



held innocent in the proceedings.

While on the subject and since the charge memo rested exclusively on the joint inspection report of the Principal Secretary, Home Department and the Addl. Director General of Police, I would also refer to the said joint report, a copy of which is present at Annexure 1. The conclusion of the joint enquiry is present at paragraph 8 and while the two Senior Officers of the State Government have confirmed that there is no evidence to confirm the allegation that Manoj Yadav was arrested and brought to the police station in evening of 11.1.2012, it is further observed at paragraph 9 that there is no evidence on record to prove that the death of Manoj Yadav took place in police custody. However, the Joint Committee preferred to await the finding of the Laboratory on the Viscera report to confirm the reason for the death.

The copy of the Viscera report is placed at Annexure 1/1 and confirms the death of Manoj Yadav due to intake of Aluminium Phosphide popularly known as 'Celphos', which is a severe gastro intestinal irritant, and is used as a grain preservative. The postmortem report is discussed at paragraph 6 of the joint report at Annexure 1 and no external injury on the person of the deceased is mentioned therein. Such being the position where the death in custody was ruled out by the Joint Committee Report, the Viscera report attributed death due to



consumption of 'Celphos' and postmortem report did not reflect any major injury as the cause of death of the deceased and the Superintendent of Police after investigation has exonerated the petitioner of any role in the death, yet adventurously and wholly unwarrantedly, the disciplinary proceeding in question was initiated.

Obviously such kind of enquiry would only result in a report as found at Annexure 11 of the writ petition which exonerates the petitioner of the allegations. The conclusion of the Enquiry Officer on each of the allegations is that the charges have not been proved. It is in view of such position where neither the joint inspection report nor the enquiry report in disciplinary proceeding nor the police investigation report nor the postmortem report or the Viscera Report, gave any reflection of involvement of the petitioner in the death of Manoj Yadav that he represented before the Principal Secretary, Home (Police) Department on 29.10.2015 with a prayer to drop the proceedings vide his representation placed at Annexure 12.

The file has been produced by Mr. Verma and which would confirm that the Principal Secretary not once but on two occasions i.e. on 23.11.2015 and again on 2.4.2016 has opined that the charges have not been proved and the proceedings should be dropped exonerating the petitioner of the charges. Despite such opinion being expressed by the Principal Secretary and whereafter either the proceedings ought to



have been dropped or there could be a difference of opinion by an Officer higher than the Principal Secretary, yet it is the Joint Secretary showing unnecessary interest that the matter was reinitiated and on a completely misreading of the enquiry report that a confusion was created to recommend for a review of the matter which has been mechanically endorsed not only by the Principal Secretary but also the Chief Minister, who have not bothered to satisfy themselves whether or not the matter required any persuasion after the conclusive report(s) discussed above. The confusion so created by the Joint Secretary mechanically endorsed by the superiors led to issuance of a second show cause notice, a copy of which is placed at Annexure 14 to the writ petition. In my opinion, the observations made by the Joint Secretary to the issue at paragraphs (i) and (ii) are contrary to the facts recorded by the Joint Committee in the report at Annexure 1 as well as the enquiry report at Annexure 11. While the Enquiry Officer has completely exonerated the petitioner of all the charges as manifest from his conclusion at running Page-101, the Joint Secretary on a complete misreading of the discussion made by the Enquiry Officer on the stand of the Presenting Officer, has observed that the role of the petitioner for the charges (ga) and (gha) was held proved by the Enquiry Officer which is in fact contrary to the conclusion recorded by the Enquiry Officer.



As I have observed above, the charge memo exclusively rests on the joint inspection report given by the Principal Secretary, Home (Police) Department and the Addl. Director General of Police and which nowhere implicates the petitioner on his role in the death of Manoj Yadav, rather they have confirmed that it did not take place in police custody and its cause would only be known from the Forensic Science Laboratory report which attributes death due to consumption of 'Celphos' with no external injury reportedly found on the person of the deceased, as per the postmortem report. The 2nd show cause notice issued on mere suspicion in the circumstances present, as I have already observed, is contrary to the facts on record. The petitioner filed his exhaustive reply to the show cause vide Annexure 16 but which has resulted in a mechanical order of penalty impugned at Annexure 18 to the writ petition which has been endorsed by the State Government vide Annexure 24 to the interlocutory application.

In the nature of the discussion which I have made hereinabove, I do not find any necessity to enter into any further discussion to hold that the order of penalty is resting on no evidence, rather is founded on mere suspicion. Law is well settled that a suspicion however high, can never be a foundation for inviting a penalty and even if the conclusion in a departmental proceeding would rest on a preponderance of probability but there has to be some



evidence to connect the delinquent with the alleged offence and certainly a suspicion cannot be a foundation to connect the delinquent with the alleged offence.

I have consciously observed that the charge memo simply refers to the joint inspection report at Annexure 1 as evidence. Meaning thereby no oral evidence nor any other documentary evidence was led by the department to drive home the charges. Since the joint inspection report in no manner connects the petitioner to the death of the deceased, rather confirms the death by 'Celphos', the entire proceedings initiated against the petitioner is held a sham and undue harassment to the petitioner who has unnecessarily been dragged into a proceeding which should have been closed on the very submission of the joint inspection report or after submission of the Forensic Report or at least on submission of the enquiry report by the Enquiry Officer bearing in mind the final form submitted by the investigating agency holding the petitioner innocent.

For the reasons so discussed, the entire proceedings together with the charge memo at Annexure 22, the second show cause notice at Annexure 14, the order of penalty bearing Memo No. 3275 dated 20.4.2017 passed by the State Government in its Home Police Department at Annexure 18 and the appellate order bearing Memo No. 5332 dated 3.7.2017 at Annexure 24 are held per se illegal



and contrary to the materials on record and are accordingly quashed and set aside.

The petitioner is reinstated on his post and shall be entitled to all consequential benefits to which he is found entitled by virtue of quashing of the said orders.

The writ petition is allowed together with a cost quantified at Rs.50,000/- payable by the State with the Patna High Court, Legal Aid Committee.

Let the records produced by Mr. Verma be returned for his custody.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2017
Transmission Date	NA

