

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5618 of 2013

Prakash Tamang Son Of Budhi Bahadur Tamang Resident Of J.A.P. 1, Nepal House, Hospital Road, Doranda, P.S. - Doranda, District : - Ranchi (Jharkhand)

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna
3. The Deputy Inspector General Of Police (Central Division), Patna
4. The Commandant, Bihar Military Police -1, Patna
5. Pushp Kumar Pradhan, House Keeper (Grihpal) Inspector (A), B.M.P. -1, Patna
6. Naryan Prasad Sharma, Adjutant Sub-Inspector (A), B.M.P.-1

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Giri, Adv
For the Respondent/s : Mr. Ravindra Kumar AC to AAG-6.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-01-2018

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

2. This petition under Article 226 of the Constitution of India, has been filed for quashing the order dated 12.07.2012 passed by the Commandant, Bihar Military Police-1, Patna, by which petitioner has been dismissed from service as well as the order dated 25.08.2012 passed by the Deputy Inspector General of Police, Central Division, Patna, by which the appeal of the petitioner has been rejected, as well the order dated 17.12.2012, passed by the Director



General of Police, Bihar, Patna by which memorial of the petitioner has been rejected.

3. Briefly stated, the case of the petitioner as stated in the petition is that the petitioner was appointed on the post of Constable in B.M.P-1, Patna on 11.04.2002 and remained in service till his dismissal on 12.07.2012. The petitioner has been awarded many times for his bravery and sincerity by Inspector General of Police, Abhiyan, Bihar, Patna. Petitioner was posted at Gorkha Regiment Headquarters B.M.P-1, Patna from 07.01.2012 and he was placed under suspension by order dated 24.01.2012 in contemplation of departmental proceeding and indiscipline issued by Commandant B.M.P-1, Patna on being found in intoxicated condition at Regiment Headquarter on Security Guard on 19.01.2012 and being absent in fatik and night count parade on 15th and 16th January, 2012. The petitioner was served show cause notice vide memo dated 08.02.2012 to submit his reply within five days from the date of receipt of show cause. The petitioner submitted his show cause reply to the Commandant, B.M.P-1, Patna on 02.03.2012 that due to illness, he was feeling very weak and as such he could not perform the Santari Drill during surprise inspection of the House Keeper (Grihpal)



Inspector on 09.01.2012 and also did not perform well in the security duty of D.G.P. Bihar on 15.01.2012, and remained absent in fatik and nigh court parade on 15th and 16th January-2012, as he had apprised House-Keeper Inspector of these facts. The petitioner filed representation before the Commandant, B.M.P-1, Patna for revocation of his suspension and his suspension was revoked on 10.03.2012, with a rider that decision of suspension period of the petitioner would be taken in the departmental proceeding. The show cause filed by the petitioner was not found to be satisfactory and departmental proceeding was initiated against him and charges were framed against him vide memo no. 16.04.2012. The charges framed were as follows:-

(i) during surprise inspection by the House Keeper (Grihpal) Inspector on 09.01.2012, he was found intoxicated during Santri Drill and on account of that constable 685 Santu Ram Dharthi was deputed in his place.

(ii) on 15.01.2012 he was deputed on duty in the security Guard (General) of D.G.P, Bihar, but on that place also he was found intoxicated and hence constable 1090 Ramesh Karki was deputed



on duty in his place.

(iii) in Night Court Parade on 15.01.2012 and in fatik in the morning of 16.01.2012, he was found absent.

4. In the chargesheet, it was mentioned that the petitioner had been inflicted with one minor and seven major punishment in past for the charges, being not timely reporting after leave, and for dereliction of duty being in the state of intoxication and had been warned against dismissal from duty on four occasions and there has been no improvement in his conduct and his conduct was against being a good police personnel and no interest in police service.

5. Inquiry was conducted against the petitioner and the enquiry officer found that all the charges against the petitioner were proved on the basis of two witnesses and on the basis of said inquiry report, the disciplinary authority Commandant, B.M.P-1, issued a show cause notice to the petitioner against the contemplated dismissal from service and to file his reply within 15 days. However, no copy of inquiry report was ever served upon the petitioner. The copy of inquiry report was not made available to the petitioner alongwith the aforesaid show cause notice of proposed



dismissal, as such he was not in a position to give reply of show cause, however, he submitted his explanation on the basis of charges levelled against him and denied the charge of his being intoxicated at the time of duty on both days i.e. on 09.01.2012 and 15.01.2012. The petitioner in his reply has stated that the allegation of intoxication is not correct as he was not physically fit and he was undergoing treatment of epilepsy and was advised to take some medicines which he used to take regularly, which gives an impression of intoxication. The Commandant, B.M.P-1, Patna being the disciplinary authority came to the conclusion that the charges including drinking liquor has been proved and petitioner did not examine any defence witness nor cross-examined any witness produced by the department, and his antecedent also being not satisfactory, dismissed the petitioner from service w.e.f. 12.07.2012 under the provision of Rule 824 and 823(K) of the Bihar Police Manual.

6. The petitioner preferred an appeal against the order of dismissal before the D.I.G, Central Division, Patna and it has been submitted that without affording any opportunity of hearing to the petitioner and without considering the grounds of appeal as contained in memo of appeal, dismissed his



appeal on 27.08.2012. The petitioner also preferred memorial before the D.G.P. and the same was also rejected by order dated 19.12.2012.

7. It has been submitted on behalf of the petitioner that at the time of issuance of show cause notice, the authority had made up their mind to impose punishment on petitioner even without considering his reply to the show cause.

8. The respondents have filed their counter affidavit in which they have stated that the petitioner was in the habit of intoxication, indiscipline, disobedience and dereliction of duty. They have denied that the copy of inquiry report was not served upon the petitioner and it has specifically been stated that the inquiry report along with show cause was served upon the petitioner and after due consideration order of dismissal has been passed by the disciplinary authority for his misconduct and appellate authority dismissed his appeal and his memorial was also rejected by the D.G.P., Bihar. The petitioner being member of disciplined force cannot be retained in police force, when he was found under intoxication, instances of indiscipline and insubordination as such this Court does not find any illegality in the order passed by the disciplinary authority and judicial review of order of



punishing authority in a departmental proceeding is limited to the scope of decision making process. The High Court in its writ jurisdiction cannot sit in appeal over the findings of disciplinary authority, however, as far as quantum of punishment is concerned since the petitioner has been imposed order of dismissal from service, it is the extreme punishment provided under rules and while considering the punishment, the disciplinary authority has also taken notice of his past misconduct.

9. However, it has been submitted by the learned counsel for the petitioner that he has been awarded by the highest authorities in police department for his bravery and has shown exemplary performance of his duty, as such not only his misconduct but also his good conduct ought to have been considered by the disciplinary authority while imposing punishment of dismissal. The submission of learned counsel for the petitioner that as far as quantum of punishment is concerned, it requires reconsideration by the disciplinary authority.

10. In view of the above, the matter is remitted to the disciplinary authority to reconsider the quantum of punishment on the basis of proved charge as well as his past



misconduct and also his good conduct and reconsider the quantum of punishment imposed by him on the petitioner.

11. The Disciplinary Authority may re-consider quantum of punishment imposed on the petitioner within three months from the date of receipt/production of a copy of the order of this Court.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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