

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21980 of 2013

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Radhe Shyam Singh Son Of Late Kisundeo Singh Village - Chitaura, P.S. +
District – Sheikhpura Petitioner

Versus

1. The State Of Bihar
 2. Director General Of Police, Bihar, Old Secretariat, Patna
 3. Inspector General Of Police, Bhagalpur Zone, Bhagalpur
 4. The Superintendent Of Police, Lakhisarai
 5. D.I.G. Of Police, Munger Range, Munger Respondents
- =====

Appearance :

For the Petitioner : Mr.S.S.Thakur, Advocate and
Mr. Arvind Kumar, Advocate
For the State : Mr. f.Ali Ahmad, AC to AAG 12.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 22-06-2018

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

2. Petitioner has filed the instant writ petition for quashing
order dated 21.10.2013 (Annexure 9), issued by the Director
General of Police, Bihar (respondent no. 2), whereby in exercise of
power under Rule 853A of the Bihar Police Manual, the D.G.P. has
enhanced punishment of the petitioner, awarded under order dated
22.4.2009 (Annexure 4) by the D.I.G. of Police, Munger, whereby
two annual increments of the petitioner was withdrawn which was
equivalent to three black marks. Further, the D.I.G. of Police,
Munger being the Disciplinary authority has directed that for the
period of suspension nothing else would be paid to the petitioner



and the intervening period would be treated as half pay earned leave.

3. Learned counsel for the petitioner has submitted that against the order issued by the D.G.P., Bihar, the petitioner preferred memorial before the Government of Bihar, Home Police Department, Government of Bihar (respondent no.1) which has been rejected by an order dated 28.6.2016. The same is placed on record by filing I.A. No. 4462 of 2018. However, no ground has been made out in the said I.A. to challenge order dated 28.6.2016 whereby the petitioner's memorial has been rejected by the Home Police Department, Government of Bihar.

4. I.A. No. 4462/2016 in so far as it prays for adding a prayer to the writ petition for quashing order dated 28.6.2016 issued under the signature of the Joint Secretary, Home Police Department is allowed. Since, no grounds for challenging the same has been made out, prayer made in the original writ petition is being taken up for consideration.

5. Learned counsel for the petitioner has submitted that the order passed by the D.G.P., Bihar in purported exercise of power under Rule 853A of the Bihar Police Manual, is bad in law as the same has been passed without following the procedure contained in Rule 853A of the Bihar Police Manual. He submits that the said



power could have been exercised by the D.G.P. in a reasonable time, whereas in the instant case, this power has been exercised belatedly and as such the same is unsustainable in law. The petitioner has not made any challenge to the proceedings prior to order dated 21.10.2013, issued by respondent no.2.

6. Submission is made on behalf of the petitioner relying upon the judgment of this Court in case of **Ranjan Kumar Vs. The State of Bihar and others**, reported in **2016(3) PLJR 968**. It is submitted that the Court in the order passed in case of **Ranjan Kumar**, has laid down a period of three years as being a reasonable period within which order may be passed in exercise of power under Rule 853A of the Bihar Police Manual. It is his submission that in the instant case order has been passed by the DGP in exercise of power under Rule 853A of the Bihar Police Manual about four years after issuance of the order of punishment by D.I.G., Munger under order dated 22.4.2009.

7. Records of the case reveal that the petitioner was proceeded against for two charges. One of the charges was that on 10.7.2006 the petitioner showed rude and arrogant behaviour with the Superintendent of Police, Lakhisarai and tried to make obstruction when he had come to enquire into certain allegations levelled by the people against the petitioner in Janta Durbar. The



second charge was that on 11.7.2006 he went to the residence of the Superintendent of Police at 11 am and made an attempt to bribe him to withdraw the action taken against him on 10.7.2006. Charges were communicated to the petitioner under charge memo dated 13.7.2007 and altogether three eye witnesses who were named in the charge memo, have supported the allegations made against the petitioner and conclusion has been arrived at regarding the petitioner being guilty of the first charge for the act of indecent behaviour with the Superintendent of Police, Lakhisdarai. Accordingly, punishment of withholding of two increments as noticed above was awarded to the petitioner.

8. The petitioner filed an appeal before the I.G. of Police, Bihar which was rejected and then D.G.P. while exercising power under Rule 853A (a) of the Bihar Police Manual, on a reference made by the I.G., Bhagalpur, has passed the impugned order.

9. The I.G. has referred the matter to the D.G.P. in exercise of jurisdiction under Rule 857 of the Bihar Police Manual. The D.G.P. has held that the material exists for the punishment of the petitioner since second charge was also proved on the preponderance of probability. He has relied upon the deposition of the witnesses in the proceedings. The second allegation has been corroborated by witness no.5 Sailesh Kumar Jha, Constable No.



1680 who has specifically supported the allegation against the delinquent petitioner that he attempted to bribe the Superintendent of Police on 11.7.2006. Finding to that extent has also been recorded in the order dated 2.5.2013 (Annexure 6), passed by the D.I.G. of Police, Bhagalpur which order has never been challenged by the petitioner.

10. The second allegation of bribing the Superintendent of Police, Lakhisarai stands proved. Accordingly, punishment has been modified and the petitioner has been awarded punishment of compulsory retirement under order dated 21.10.2013. While awarding the punishment of compulsory retirement, the D.G.P. has exercised power under Rule 853A of the Bihar Police Manual immediately within five months from the issuance of order dated 8.5.2016, passed by the appellate authority.

11. Even otherwise, the petitioner's case is not covered by the decision in case of **Ranjan Kumar (supra)** since the facts of the case was essentially different inasmuch as in the said case on appeal the petitioner's punishment has been set aside by the appellate authority and the D.G.P. had exercised power under Rule 853A of the Bihar Police Manual three years after the punishment was set aside by the appellate authority. This is not the position in the instant case.



12. It is submitted on behalf of the petitioner that while awarding the punishment of compulsory retirement, three months notice should have been given with pay in lieu of notice, which has not been done in the instant case. Specific prayer for three months pay has not been made by the petitioner in the writ petition thereafter no order can be passed in this regard. However, it would be open for the petitioner to approach the authorities for grant of such payment.

13. The writ petition is dismissed with the aforesaid observations.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	7.7.2018
Transmission Date	NA

