

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12175 of 2014

=====

Nakshatra Malakar Son of Late Munshi Mandal, Resident of Village-
Nawabganj, P.O.- Balthi Maheshpur, P.S.- Kursela, District- Katihar (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chief Secretary, Govt. of Bihar, Old Secretariat, Patna null null
3. Principal Secretary, Personal and Home Special Department, Govt. of Bihar,
Old Secretariat, Patna
4. Director General of Police, Old Secretariat, Patna
5. Additional Director General of Police, Old Secretariat, Patna
6. Assistant Inspector General of Police (Inspection), Old Secretariat, Patna
7. Commandant, B.M.P. 2, Dehri on Sone, Rohtas, Sasaram
8. Inspector of Arms, B.M.P. 2, Dehri on Sone, Rohtas, Sasaram
9. Deputy Secretary of Finance, Old Secretariat, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey
For the Respondent/s : Mr. Manish Kkumar, AC to AAG6

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 16-03-2018

This writ petition under Article 226 of Constitution of India has been filed for quashing order dated 29.5.2014 passed by the Director General of Police, Patna, by which petitioner has been terminated from the post of Havaldar from Bihar Military Police2, Dehri-on-sones, with further prayer to reinstate him in the service.

Briefly stated the facts of the case is that petitioner was appointed in Bihar Police Service on the post of constable in the year 1975 and was working as Havaldar in BMP2, Dehri-on-sones. Petitioner has been awarded 58 rewards on account of his devotion to his service and no disciplinary proceeding against him has been



conducted except the present one. Petitioner had availed a house loan of Rs.2 lacs as building advance and after sanction of first installment of loan of Rs.1,50,000/- a bond paper in Form 17 was to be submitted for sanction of second installment of Rs.50,000/- and on being satisfied on proper utilization of the fund second installment of loan amounting to Rs.50,000/- was also sanctioned. However, on report that bond paper in form 17 is a manufactured bond paper, a Vigilance Case No. 16 of 2006 was registered in the Vigilance Police Station, Patna, against petitioner. However, anticipatory bail was granted to the petitioner by the High Court. A Departmental Proceeding No. 1 of 2007 was also initiated against the petitioner for manufactured submission of bond paper in Form 17 which was conducted by enquiry officer, the Inspector of Arms, BMP 2, Dehri-on-sone and petitioner was found guilty of the charges. The Disciplinary Authority i.e. Commandant BMP 14, Patna, imposed punishment of demotion for one year in the rank of constable and petitioner served the order of punishment.

After lapse of six years show cause dated 31.3.2014 was issued by the Director General of Police for enhancement of punishment imposed on the petitioner and petitioner submitted his reply to the said show cause on 30.4.2014 that he has already suffered punishment and principal amount of loan of Rs.2 lacs has



already been paid and only some interest remained to be paid. After considering his reply petitioner was terminated by order dated 29.5.2014 passed by Director General of Police from the post of Havaldar.

It has been submitted by learned counsel for the petitioner that after lapse of six years the order of punishment imposed by the Director General of Police exercising under power Rule 853 A(a) of Bihar Police Manual for enhancement of sentence and punishment of termination from service is not sustainable.

Counter affidavit has been filed on behalf of the State in which it has been stated that impugned order of dismissal was passed by the Director General of Police under Rule 853A of Bihar Police Manual in exercise of such power and after issuance of due notice to petitioner the Director General of Police in exercise of power under Rule 853A has enhanced the punishment upon petitioner as the earlier punishment imposed was too lenient with respect to gravity of proved charge. The issue raised by petitioner in this case is no more res integra and same has been decided in case of Anjan Kumar Singh vs. State of Bihar & Ors. Reported in 2001(4) PLJR 177 in which it has been observed that power under Rule 853A can be exercised by the Inspector General of Police within a reasonable time i.e. within a period of three



years of exercise of such power was held to be not reasonable then the order passed by the DGP for enhancement of punishment after three years was quashed.

In the present case, petitioner was awarded punishment by the Disciplinary Authority on 31.1.2008 and after six years of passing such order, the Director General of Police in exercise of power has imposed punishment of dismissal and in his show cause it was stated that why petitioner should not be dismissed from the service from which it can be inferred that reviewing authority had issued show cause notice with a predetermined mind to dismiss the petitioner and not for enhancement of punishment under the rules. The show cause issued after 6 years of punishment order was bad in law and subsequent punishment of dismissal imposed upon petitioner is not sustainable and as such set aside. Petitioner is directed to be reinstated in service with all consequential benefits including continuity of service and back wages.

The writ petition stands allowed.

(S. Kumar, J)

sudip/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

