

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2240 of 2015
IN
Civil Writ Jurisdiction Case No. 13502 of 2015**

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Chandeshwar Singh, S/o Ram Bilas Singh, Resident of village- Morath, Kasaw,
District- Bhojpur, A/P Jail Warden, Central Jail, Gaya.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Prison, Home Department,
Bihar, Patna.
2. I.G. Prison, Bihar, Patna.
3. Superintendent, Central Jail, Gaya.
4. Superintendent, Mandal Kara, Nawada.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birendra Singh, Adv.

For the Respondent/s : Mr. Manoj Kumar Sinha, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 04-04-2018

Aggrieved by the judgment and order dated 3.9.2015
passed by a learned Single Judge of this Court in CWJC No.13502
of 2015, whereby the appellant's writ application has been
dismissed, the present intra Court appeal under Clause 10 of the
Letters Patent of this Court has been filed.

2. This appeal has been admitted for hearing vide an order
dated 14.9.2017 and accordingly it has been placed for final hearing
and disposal before us.

3. We have heard Mr. Birendra Singh, learned counsel for
the Appellant and Mr. Manoj Kumar Sinha, learned AC to GA-9.



4. The appellant at the relevant point of time was posted as a Warden in Mandal Kara, Nawada. It appears that raids were conducted in the jail premises by the Additional Collector at 5.00 PM on 15.11.2011 and 28.12.2011. In the raid conducted several sim cards were recovered from the possession of some of the prisoners lodged in different wards of the jail, In addition, one mobile set and 100 grams of Ganja was also recovered.

5. In the raid conducted on 28.12.2011 on the other hand, the officials discovered food articles in the possession of the prisoners in the ward. This led to framing of charge against 7 persons including this appellant. Apparently, the allegation against the appellant was that he failed to discharge his duty while posted at the gate of the jail because of which the food articles and the sim cards could be allowed to enter into the jail premises.

6. The appellant participated in the enquiry proceeding. The report of the Enquiry Officer has been brought on record by way of Annexure 'F' to the counter affidavit. The Enquiry Officer found him guilty of negligence of duty, as is evident from the conclusion of the Enquiry Officer. While recording his findings the Enquiry Officer also recorded that the Presenting Officer could not establish that the food materials recovered in course of raid were brought from outside the jail premises through gate or the said



articles belonged to the jail itself.

7. The Disciplinary Authority, based on the said report of the Enquiry Officer while holding the appellant and others guilty of the charge, imposed the punishment of reduction in pay, equivalent to two annual increments in pay, by order issued vide Memo No.3872 dated 15.7.2014.

8. Be it noted that the report of Enquiry Officer was supplied to the appellant along with the second show cause notice, to which the appellant had responded. He had taken specific plea that there was no finding in the report of the Enquiry Officer holding him guilty of the allegation in relation to recovery of the sim cards. He also took the plea in his reply to the second show cause notice that there was no finding recorded by the Enquiry Officer that the food articles recovered from within the jail premises were illegally transported through the gate where the appellant was deputed.

9. Aggrieved by the order of the Disciplinary Authority the appellant had preferred service appeal which also came to be dismissed by order issued vide Memo No.3081 dated 25.5.2015. These were the orders against which the appellant approached this Court by filing CWJC No.13502 of 2015, which came to be dismissed vide judgment and order passed by the learned Single Judge, which is impugned in the present appeal.



10. Mr. Birendra Singh, learned counsel appearing on behalf of the appellant has submitted that even if the findings recorded by the Enquiry Officer is treated to be correct, no charge of misconduct is established against the appellant inasmuch as there is absolutely no finding that the food articles were transported into jail campus through the gate when the appellant was on duty. He contends that as a matter of fact there was no enquiry on this point at any level. He has also submitted that the order of the Disciplinary Authority is perfunctory and it does not disclose application of mind. Similar submissions have been made in respect of the order passed by the Appellate Authority.

11. Mr. Manoj Kumar Sinha, learned Assisting Counsel to Government Advocate No.9 submitted that considering the nature of misconduct established against the appellant, the Disciplinary Authority thought it appropriate to impose a minor punishment of reduction in pay equivalent to two annual increments. He has submitted that the findings of the Enquiry Officer cannot be said to be without any evidence.

12. We have perused the materials on record including the charge memo, report of the Enquiry Officer, the order of the Disciplinary Authority and the order of the Appellate Authority.

13. Learned counsel appearing on behalf of the appellant,



in our opinion, appears to be correct in his submission that the Enquiry Officer has not recorded any finding that the food materials entered into the jail premises at the time when the appellant was deputed at the jail gate. As a matter of fact there does not appear to be any material on record to show whether there was any enquiry on the point as to when the said materials had in fact entered into the jail premises. We also agree with the submissions advanced on behalf of the appellant that the order of the Disciplinary Authority is perfunctory. The Disciplinary Authority has merely referred to the findings recorded by the Enquiry Officer in six different departmental enquiries. All the six departmental enquiries have been disposed of by one common order dated 15.7.2014, by just referring to the findings in the enquiry report. The Appellate Authority has also failed to take into account these aspects in his order dated 25.5.2015.

14. In our view, the finding recorded by the Disciplinary Authority holding the appellant guilty of the charge is perverse, in absence of specific finding that it was during the period when the appellant was posted at the gate, when the food articles were illegally allowed to be transported into the jail premises. As a matter of fact there was absolutely no evidence led in the departmental proceeding on this point i.e. as to whether the food materials entered



into the jail premises during the duty hours of the appellant at the jail gate.

15. The discussions as above, make the order of the disciplinary Authority dated 15.7.2014 (Annexure 5 of the writ application) and the order of the Appellate Authority dated 25.5.2015 (Annexure 7 of the writ application) unsustainable. The said orders are accordingly set aside. The order passed by the learned Single Judge dated 3.9.2015 in CWJC No.13502 of 2015 is set aside.

16. This appeal is allowed. C.W.J.C. No.13502 of 2015 stands allowed.

17. There shall be no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

SKPathak/-

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