

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.814 of 2015

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Anzore Kullu son of sri Juel Kullu resident of village Jode Toli, P.S. Simdega, District Simdega (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Old Secretariat, Patna.
2. The Director General cum Inspector General of Police Bihar, Patna.
3. The D.I-G of Police, Military Police Northern zone Muzaffarpur.
4. Commandant, B.M.P.6 , Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 26-03-2018

Heard counsels for the petitioner. No one appears for the State.

2. The petitioner who was posted as Hawaldar in BMP 6, Muzaffarpur has been dismissed from service under the impugned order dated 21.07.2008 by the Commandant, BMP 6 Muzaffarpur. The said order of dismissal has been affirmed by the Deputy Inspector General of Police (for short 'DIG'), northern Zone, Muzaffarpur vide order dated 09.01.2009 whereby the petitioner's appeal against the order of dismissal has been rejected. The petitioner's memorial has also been rejected by the Director General of Police (for short 'DG'), Bihar Patna vide order dated 20.07.2011. All these issues are under challenge in the instant writ proceedings.

3. At the very outset counsel for the petitioner draws attention of this Court towards the supplementary affidavit which has



been filed bringing on record one order dated 15.09.2017 passed in C.W.J.C. No. 15942 of 2012. Though the copy of the said counter affidavit has been served on the counsel for the State on 31.01.2018 but till date there is no response on behalf of the State disputing the assertions made in the writ petition and none appears on behalf of the State.

4. The petitioner has been awarded punishment of dismissal by alleging his responsibility in theft of some arms and ammunition in the main arsenal as well as in training arsenal on 27.08.2006.

5. Counsel for the petitioner submits that the said order of dismissal has been issued in spite of the fact that Enquiry Officer after considering all the materials on record and after detailed enquiry has concluded that the petitioner was not responsible as he was posted as an Assistant and responsibility of theft has been found against Duryodhan Ram as he was In-Charge of the Training Arsenal as well as of the main arsenal in the BMP 6, Muzaffarpur. The Enquiry Officer had clearly found that in fact Sri Duryodhan Ram, Sub-inspector was the in-Charge of the arsenal and the responsibility of theft was primarily of the said Duryodhan Ram.

6. This finding has been considered in the order dated 15.09.2017 passed in C.W.J.C. No. 15942 of 2012 in the case of one Passing Lama who too has been inflicted with punishment of dismissal by holding responsibility as “in-Charge” of the said two Arsenals, in respect of the very same theft dated 20.07.2006.

7. In view of the findings recorded by the Enquiry Officer in favour of the said Passing Lama and that in fact the responsibility of theft was of the said Duryodhan Ram, Sub-Inspector and considering the fact that no punishment whatsoever has been



awarded to the said Duryodhan Ram, Sub-Inspector, the order of punishment in respect of Passing Lama has been set aside by this Court by the said order as noticed above.

8. In respect of the petitioner also, the Enquiry Officer has clearly concluded in his enquiry report that the petitioner was not responsible for the theft as he was an Assistant and initially responsibility of the said Duryodhan Ram has been found. The said finding has also been affirmed by this Court in the said order dated 15.09.2017 passed in C.W.J.C. No. 15942 of 2012. Relevant extract of the same is being reproduced for easy reference:

“7. The petitioner has thus arbitrarily and without valid basis been treated as the in-charge of the arsenal at the relevant time, and in the process, the finding in the inquiry report to the contrary that it was Sri Duryodhan Ram, who was in fact the in-charge of the arsenal, has been completely ignored.”

9. Since the said Duryodhan Ram has not been inflicted with any punishment, this Court while considering the fact that the punishment imposed upon Passing Lama is unduly harsh and disproportionate in view of the fact that subsequently recovery of Rs. 33,751/- had also been made from the said Passing Lama, had found the punishment order to be unsustainable and the same has been quashed.

10. Counsel for the petitioner has submitted that recovery of an amount of Rs.33, 751/- has also been made from him on account of the theft of arms and ammunition from the said arsenal.

11. This Court finds that the petitioner's case is identical to that of Passing Lama. Since the responsibility of the said theft has



already been found against the said Duryodhan Ram by the earlier order of this Court, any other order imposing responsibility or liability on the instant petitioner has to be held to be unsustainable as has been done in the case of other accused Passing Lama. As a result the impugned order of punishment will have to be set aside. Accordingly, the impugned order of dismissal dated 21.07.2008 as well as the appellate order dated 05.08.2008 passed by the DIG and the order dated 20.07.2011 of the DG, are hereby quashed. As a result of quashing of the impugned order the petitioner shall be entitled of his consequential benefit.

12. Writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
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