

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5096 of 2014

=====

Asheshwar Nath Singh, S/o Late Rajdeo Singh, Resident of Village- Ram Chandrapur, P.S- Thawey, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Jail) Department, Old Secretariat, Patna.
2. The Inspector General of Police, Bihar, Patna.
3. The Jail Superintendent, Central Jail, Beur, Patna.
4. The Jail Superintendent, Central Jail, Buxar.
5. The Accountant General, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Dhruba Mukherjee, Sr. Advocate Mr. Md. Nazir Ansari and Mr. Ganesh Singh, Advocates
For the State	:	Mr. Jitendra Kumar, A.C. to A.A.G. 14

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-04-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following reliefs:

“ That by this petition the petitioner prays for direction on respondents to release all the pensionary benefits, except the amount already paid, like full pension, full gratuity, leave encashment, and the other legal dues for which the petitioner is legally entitled for.”

3. The petitioner was a Jail Warder under the Bihar Government and in the year 1988-89 he had stopped one prisoner



from escaping from the jail and he was recommended for promotion which was given on 19.08.1988 making him Head Warder. In March/April, 2009, he was transferred and posted as Head Warder in Central Jail, Buxar. On 31.12.2011, while being on night duty from 21:00 hours to 24:00 hours, between the nights of 18th /19th December, 2011, three prisoners managed to escape out of which one returned and this was detected at 23:45 hours on 18th December, 2011. The petitioner had gone outside the jail to call the person, who was to take over from him for the next shift, from 23:30 hours to 23:45 hours on 18th December, 2011 and upon his return, he saw that there was commotion in the jail on account of three prisoners having run away. However, one of the prisoners came back. For such incident, the petitioner along with another person was placed under suspension on 29.12.2011. A departmental proceeding was initiated and memo of charge dated 18.01.2012 was served on him. However, formal departmental proceeding was instituted by order dated 13.04.2012. Upon enquiry, a report was submitted by the enquiry officer on 18.09.2012 in which finding was that though the petitioner could not be entirely exonerated of the charges but against him the gravity was less. However, the disciplinary authority gave second show cause to the petitioner and finally by the order impugned dated 03.04.2014, punishment has been awarded in terms



of Section 139 of the Bihar Pension Rules, 1950 and 50% pension has been forfeited and for the period of suspension he has been held not entitled to any payment, except for subsistence allowance.

4. Learned counsel for the petitioner submitted that keeping in view the settled law that unless the order of the disciplinary authority/enquiry report is based on no evidence, the Court normally should not interfere in the matter but with regard to the proportionality of the charge compared to the punishment inflicted and its quantum is always open to scrutiny by the Court in judicial review. Learned counsel submitted that the charge itself was that the petitioner had been negligent and that it amounted to dereliction of duty and not one of connivance in the episode of three prisoners having managed to run away from the jail. It was further submitted that though even on facts there are good grounds which are tenable but going by the principle of least resistance, he would address the Court with regard to ultimate decision being disproportionate to the allegation made against the petitioner. It was submitted that the petitioner in his 43 years of service was never proceeded against and in fact has been rewarded by way of promotion for him having caught a prisoner who was trying to run away. It was further submitted that though the petitioner superannuated during the pendency of the departmental proceeding



while being under suspension; on 31.10.2012, the suspension was within one year of his superannuation and, thus, harsh punishment of stoppage of 50% of pension on a permanent basis is unjustified and unreasonable. Learned counsel submitted that at an old age the petitioner having superannuated and having to support his wife and one son and his family who are dependant on him, such punishment has caused hardship for the entire family. Learned counsel submitted that the Courts have taken a consistent view that mitigating factors permit interference as far as quantum is concerned, without commenting on the disciplinary proceeding against the delinquent. For such proposition, learned counsel relied upon the decisions of the Hon'ble Supreme Court in the case of **R. R. Parekh v. High Court of Gujarat** reported as (2016) 14 SCC 1; **Girish Bhushan Goyal v. BHEL** reported as (2014) 1 SCC 82 and **Surendra Prasad Shukla v. State of Jharkhand** reported as (2011) 8 SCC 536, where the Courts have interfered in the quantum in the background that the allegation as well as the past track record of the delinquent did not justify extreme order of punishment. Learned counsel submitted that there is scope for interference in the matter as 50% of stoppage of pension on permanent basis being apparently and palpably extreme, it is within the discretion of the Court to either reduce the quantum or direct it to be restricted for a reasonable



period, as already more than five years have elapsed.

5. Learned counsel for the State submitted that the Court would not go into the quantum once the same is pursuant to a proper disciplinary proceeding. For such proposition, learned counsel relied upon the decisions of the Hon'ble Supreme Court in the case of **State Bank of India v. Samarendra Kishore Endow** reported as **(1994) 2 SCC 537** and **K. Nagaraj v. State of A.P.** reported as **AIR 1985 SC 551**.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is persuaded to interfere in the quantum of punishment awarded to the petitioner, primarily on the basis of him having an unblemished track record in a position in which the petitioner was working for 42 years, out of 43 years he was in service, coupled with the fact that in appreciation of his efforts, out of turn promotion has been granted to him and even at the fag end of his career charges being only with regard to him being negligent amounting to dereliction of duty, and not of active connivance, and the fact that he retired from a low post and has three dependants, besides himself, to take care of, 50% of pension which, in effect, means him getting less than 25% of his original salary is undoubtedly disproportionate to the alleged charges against the petitioner. The Court is fortified in its views by the



decision of the Hon'ble Supreme Court relied upon and referred to by learned counsel for the petitioner. In this connection, paragraphs no. 20 and 21 of the judgment of the Hon'ble Supreme Court in the case of **R. R. Parekh** (supra) being relevant are reproduced hereinbelow:

“20. A disciplinary inquiry, it is well settled, is not governed by the strict rules of evidence which govern a criminal trial. A charge of misconduct in a disciplinary proceeding has to be established on a preponderance of probabilities. The High Court while exercising its power of judicial review under Article 226 has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence. The High Court would not interfere unless the findings are found to be perverse. Unless it is a case of no evidence, the High Court would not exercise its jurisdiction under Article 226. If there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence would not fall for re-appreciation or re- evaluation before the High Court. Applying these tests, it is not possible to fault the decision of the Division Bench of the Gujarat High Court on the charge of misconduct. The charge of misconduct was established in disciplinary Inquiry No. 15 of 2000.

21. That leads us to the issue of the punishment



which has been imposed on the Appellant. The Appellant has been dismissed from service. The submission of the Appellant is that having regard to the fact that he has an unblemished record of service, the imposition of the punishment of dismissal would be disproportionate to the misconduct which has been found to be established. Rule 6 of the Gujarat Civil Services (Discipline and Appeals) Rules, 1971 enunciates disciplinary penalties. Among them are:

(i) compulsory retirement;

(ii) removal from service which shall not be a disqualification for future employment under Government;

(iii) dismissal from service which shall ordinarily be a disqualification for future employment under Government.

The punishment must be proportionate to the misconduct established. Having due regard to the nature of the misconduct which has been found to be established and the totality of circumstances we are of the view that the punishment of dismissal should stand substituted by an order of compulsory retirement. The Appellant has attained the age of superannuation and would be entitled to his retirement benefits on that basis.”

7. Accordingly, taking an overall view in the matter



and in the background of the decisions of the Hon'ble Supreme Court, especially those referred to hereinabove, the order impugned contained in Memo No. 1767 dated 03.04.2014 passed by the respondent no. 2 is modified to the extent that it would be only for a period of two years and thereafter the petitioner shall be entitled to full pension. Further, the present order is restricted to the petitioner only. The respondent no. 4 shall ensure that the order is complied with within two months from the date of production of a copy of this order before him. The same shall also include the arrears, as may be required be paid to the petitioner.

8. The writ petition stands allowed to the extent indicated above.

(Ahsanuddin Amanullah, J.)

Anjani/-

AFR/NAFR	AFR
U	

