

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12533 of 2011

=====

1. Moti Paswan Late Tapan Paswan Village-Nandapur, P.S-Bausi Basiati, District-Araria

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Araria
3. The Superintendent Of Police, Araria
4. The Officer-In-Charge, Bausi Police Station, Araria

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kaushal Kumar Jha, Adv.
Mr. Amish Kumar, Advocate

For the Respondent/s : Mr. Chitranjan Sinha, Sr. Adv. PAAG2
Ratna Kumari, AC to PAAG-2

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 02-07-2018

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

The petitioner is aggrieved by the order appearing in Memo No. 1303 of 01-08-2010 passed by the District Magistrate, Araria by which, the petitioner has been dismissed from service on the ground of his having been convicted for offence under Sections 302/34 of IPC in Sessions Trial No. 885 of 2000/361 of 2002 and has been sentenced to under go rigorous imprisonment for life and a sentence of three years for the offence under section 27 of the Arms Act.

Drawing the attention of this Court towards the impugned order as contained in Annexure-4 to the present writ application, a



limited issue has been raised by Mr. Kaushal Kumar Jha, learned counsel representing the petitioner.

Learned counsel for the petitioner submits that prior to passing of the impugned order as contained in Annexure-4, the respondent has not given any opportunity of hearing by way of show cause notice to the petitioner and therefore, the impugned order is fit to be set aside on this ground alone. Learned counsel for the petitioner submits that in the case of ***Suryadeo Singh Vs The State of Bihar & Ors. reported in 2011(1) PLJR 28***, this Court had occasion to consider similar issue and while taking note of the various judgments of the Hon'ble Apex Court on the subject, in paragraph-29, this Court held as under:

“We may however, carve out one exception to this proposition. There may be cases where the penalty is imposed under clause (a) of the second proviso to Article 311(2) of the Constitution. Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the tribunal may step into render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration



or by itself substitute one of the penalties provided under clause (a). This power has been conceded to the court in Union of India vs. Tulsiram Patel, AIR 1985 SC 1416.

“Where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what the penalty should be The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe to excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court’s power of judicial review subject to the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the



penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the court will also strike down the impugned order. Thus, in Shankar Das vs. Union of India (AIR 1985 SC 772) this court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case”.

Learned counsel for the State does not dispute the factual position as appearing from the writ application that prior to the passing of the impugned order, the disciplinary authority has not given any show cause notice to the petitioner and no consideration has been given to the facts and circumstances warranting dismissal from service of the petitioner.

This being the position, this Court shall not hesitate in holding that Annexure-4 i.e. the order of dismissal of the petitioner from service is liable to be set aside on the ground of violation of principle of natural justice alone.



Annexure-4 is, therefore, set aside. The District Magistrate, Araria is directed to pass a fresh reasoned order after giving opportunity of hearing to the petitioner.

By virtue of quashing of the dismissal order, the District Magistrate shall be obliged to pass consequential order in accordance with law.

This writ application stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

A.K.V./-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	

