

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.987 of 2017

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Surya Nath Singh, aged about 56 years, S/o Late Ram Rekha Singh, Resident
of Village-Pandey Patti, P.S.-Buxar Muffasil, District-Buxar

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Home Department,
Government of Bihar, Patna.
2. The Principal Secretary, Department, Government of Home, Government of
Bihar, Patna
3. The Joint Secretary cum Director (Administration), Department of Home,
Government of Bihar, Patna
4. The Inspector General (Prison), Bihar, Patna
5. The District Magistrate, Chapra.
6. The Superintendent, Mandal Jail, Chapra.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate Mr. Kaustubh, Advocate Mr. Om Prakash Kumar, Advocate
For the Respondent/s	:	Mr. Md. Nashrul Hoda Khan, S.C.1 Smt. Babita Kumar, A.C. to S.C.-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-06-2018

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

2. In this case, the petitioner is challenging the order
containing memo no. 5669 dated 06.11.2014, passed by the
Inspector General (Prison), Bihar, Patna, whereby and where-
under, punishment of censure and stoppage of four increment
with non-cumulative effect has been inflicted upon the
petitioner, which is a minor punishment.



3. It appears that a complaint was made before the Human Rights Commission about the over stay of one Sri Radhey Shyam Jaiswal and the Human Rights commission has started the proceeding and found that Sri Radhey Shyam Jaiswal was wrongly kept beyond the time limit and awarded the cost in favour of Sri Radhey Shyam Jaiswal and against the State for payment of Rs. 1,00,000/- by way of compensation, that led to forming of Three Men Committee to identify the persons responsible for the overstay of Radhey Shyam Jaiswal. The Committee examined all the records and vide report dated 2nd May, 2011 (Annexure-6) found that the petitioner along with four others were responsible for the over stay of Sri Radhey Shyam Jaiswal and accordingly, each Jailor has been held liable to pay of Rs. 12,500/- and the Superintendent of Jail, namely Rabindra Kumar Choudhary was held responsible and liable to pay an amount of Rs. 50,000/-. Accordingly, Rs. 12,500/- has been recovered from the salary of the petitioner, but whereafter, a major penalty proceeding has been initiated by issuance of “*Prapatra-K*”, wherein the charges have been levelled against the petitioner of overstaying of Sri Radhey Shyam Jaiswal in jail custody. The report of Additional collector vide memo no. 37 dated 02.05.2011 has been treated to be the basis to substantiate



the charge. Whereafter, the petitioner filed the reply to the charge-sheet and thereafter without proceeding in accordance with law and without getting a proof by a proper witness and without bringing on record indicating the involvement of the petitioner for overstaying of Radhey Shyam Jaiswal beyond the period, the order of punishment has been passed. It also appears that the Inquiry Officer in his inquiry report has recorded that as the petitioner could not bring the sufficient material to disprove the charge, was held responsible for the overstay of Sri Radhey Shyam Jaiswal

4. It is against to the basic principle of law, it is the prosecution has to prove the charge not the delinquent to disproof the charge. If the prosecution has started the proceeding, it is incumbent upon the prosecution to bring the material evidence to indicate the involvement of petitioner for overstay of Sri Radhey Shyam Jaiswal. The only material which has been mentioned in "*Prapatra K*", is the report of the Additional Collector and on perusal of the report it does not reflect that the petitioner was also involved for overstay of Sri Radhey Shyam Jaiswal beyond the period rather the petitioner has brought the convict history ticket, showing every time the remission of Sri Radhey Shyam Jaiswal has been considered by



the Superintendent of Jail and not a single time the Jailor had considered the remission to Sri Radhey Shyam Jaiswal. So on face of it, the story is quite different and in terms of the provision of Rule- 721 of Jail Manual, where it has been mentioned that ordinarily remission shall be recorded by the Superintendent of Jail and the provision of Rule 721 provides the Deputy Superintendent, Jailor or any other officers will do this job subject to especial empowerment in that behalf by him.

5. One thing is there, primarily Rule 721 of the Jail Manual envisaged that the Superintendent of Jail has to put on record the entitlement of remission of the convict and only in special circumstance empowered by the Superintendent of Jail the jailor will be liable to maintain the remission history. The record itself reflects that always as per the Jail Manual the superintendent of Jail was maintaining the record as it is reflected, every time the Superintendent of Jail has provided the remission mentioned in history sheet. At the same time, the other question is also there, when the inquiry report was submitted then it is the part of the natural justice that the copy of the same should have been served upon the delinquent and should have asked his reply about the report which has been submitted against him, but this aspect has not been followed by



the respondents and finally the punishment has been awarded by the Inspector General (Prison), inflicting the punishment as mentioned herein above, which was challenged before the appellate authority and the appellate authority has also affirmed the order passed by the disciplinary authority in the present case.

6. But in the present case, the question is that when the Jailor was not made responsible for maintaining the record of the remission and every time the record of remission has been maintained by the Superintendent of Jail in terms of the Rule-721 of the Jail Manual, only because a report has been submitted for recovery of amount from the Jailor will not *ipso facto* be treated to be involved of Jailor for the overstaying of Sri Radhey Shyam Jaiswal. It would have been verified the role that has been played by the petitioner, but neither this aspect has been considered by the Committee which has submitted the report nor the Inquiry Officer has taken care or nor the prosecution has taken care to produce the documents substantiating the involvement of the petitioner in maintaining the remission record. In contra, the record reflects otherwise, it is the Superintendent who had maintained the record of remission every time, in such circumstance, awarding the



punishment even of a small punishment cannot allowed to sustain.

7. Accordingly, the order containing memo no. 5669 dated 06.11.2014, passed by the Inspector General (Prison), Bihar, Patna as well as the order dated 08.09.2015 passed by the appellate authority are quashed. It is made clear that any recovery made on the basis of inquiry report will not be an impediment for grant of promotion to the petitioner nor it will not be treated to be a disqualification for grant of promotion. If the petitioner is found to be suitable in terms of the Rules, the authority will not take into consideration for refusing promotion on account of recovery made from the petitioner in pursuance of the order passed by the Human Rights Commission.

8. With these observations and directions this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.07.2018
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