

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1019 of 2018

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Bihari Paswan, son of Late Bhondu Paswan, resident of Village- Bondah,
P.S.- Rahuai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar Patna.
3. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur, Bihar.
4. The Superintendent of Police, Muzaffarpur.
5. The Superintendent of Police, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Bhagat, Adv.
For the Respondent/s	:	Mr. Dr. Mankeshwar Tiwari, AC to AAG3
		Mr. S.K. Jha, AC to AAG3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 29-10-2018

Heard learned counsel for the parties.

In the present case, the petitioner was a Hawaldar, was escorting the notorious criminal, namely, Shantu Singh along with three other Constables from Central Jail, Muzaffarur to Divisional Jail, Darbhanga on 22.8.2007 and the accused was received in the jail at 17.30 Hrs. Shantu Singh was brought by private Bolero car bearing registration no. BR 06 P-5079, while on way to Darbhanga Sub-Divisional Jail, the escort party along with Shantu Singh deviated the route, went to the Raymond show-room run by Sri Subhash Daruka where he was inquired into, as he was not available there, Shantu Singh threatened his Manager Arvind Thakur of dire consequences. The incident led to lodging of criminal case vide Laheria Sarai P.S. Case No. 291 of 2007 for offence under Sections



452, 384, 385, 387 of the Indian Penal Code. It appears from the records that in the criminal case, Shantu Singh has been acquitted from the charges. Apart from lodging of the criminal case, a departmental proceeding was also initiated against all members of the escort party including petitioner making an allegation of deviation from the route assisting Shantu Singh to visit the shop of Raymond show-room and when Mr. Dubhash Daruka was not found, he threatened the Manager of the show-room and, ultimately, the petitioner and three others were found involved in the committing misconduct and, after due process, the petitioner and three others were dismissed from service by the order of the Superintendent of Police, Muzaffarpur dated 11.6.2008 (Annexure-4) and that was challenged by way of appeal before the Deputy Inspector General of Police who also found the charge was proved against them. The appellate authority has recorded a finding that instead of carrying the accused persons through railway or the vehicle of the government, for his own benefit, he utilized the vehicle of the accused persons for escorting him from Muzaffarpur Jail to Darbhanga Jail.

Learned counsel for the petitioner has further submitted that the petitioner has also filed memorial before the Inspector General of Police, Muzaffarpur who allowed the same basically on the ground that Shantu Singh was acquitted in the criminal case and, on that account, the petitioner was reinstated, out of the period of



suspension of 747 days, 255 days were adjusted against the earned leave and rest of the 370 days were adjusted in half day earned leave and 122 days were accepted as extra-ordinary leave i.e. leave without pay and that period will not be treated break in service. That order was reviewed by the Director General of Police and after giving notice, the Director General of Police, Bihar, Patna, exercising power under Rule 853 (A) of the Bihar Police Manual, 1978, dismissed the petitioner from service.

Learned counsel for the petitioner submits that there were four persons in the escort and, out of four, three members have been reinstated in service with minor punishment withholding the salary of two years whereas the petitioner has been dismissed from service, that too, after lapse of seven years of acquittal by the Inspector General of Police, Tirhut Division, Muzaffarpur, submitting that the parity should be maintained in the matter of awarding punishment. In support of his submission, he has placed reliance on the judgment in the case of Rajendra Yadav Vs. State of Madhya Pradesh & Ors. reported in (2013) 3 SCC 73 wherein the issue was raised with respect to equality in the matter of punishment when the charges are identical and, there should not be any disparity in punishment when three Constables who were members of the escort party, have been reinstated in service. In such view of the matter, the order of punishment is required to be interfered with. He has further



submitted that in the present case, though the petitioner is a Hawaldar but was part of escort party and also party to the same transaction, even presuming that the petitioner had higher degree of responsibility but, the punishment of dismissal is highly disproportionate in comparison to the punishment awarded to the rest of the three persons who were earlier dismissed but, later on, reinstated in service.

Learned counsel for the State has not denied the fact that three other Constables, who were visited with the same charges related to the same incident and they have been reinstated in service but, the Director General of Police has recorded that the other persons, who were party to the escort, were dismissed from service, so, this fact was not brought to his knowledge that rest of the three persons, who were also associated in escorting Shantu Singh from Central Jail, Muzaffarpur to Divisional Jail, Darbhanga, having been reinstated in service but, he was of the view that the nature of allegation is very serious as Shantu Singh has gone to the Raymond show-room and threatened the Manager for dire consequences. Of-course the petitioner is a leader of the escort party as he was a Hawaldar whereas three other persons, who were also team members, were simple Constable and, that too, a very serious allegation is that he has utilized the vehicle offered by Sintu Singh and, on that vehicle, the escort team went to the Raymond show-



room but, at the same time, three other persons have been reinstated in service which fact was not brought to the notice of the Director General of Police, Bihar, Patna.

In that view of the matter, the order dated 9.11.2017 passed by the Director General of Police, Bihar, Patna (Annexure-13) is set aside and the matter is remanded back for fresh consideration, while passing the order, the Director General of Police will take into account the issue of equality of punishment in the background of responsibility of the petitioner as escort member as well as the effect of reinstatement of other three Constables who were also party to the escort team. The Director General of Police is directed to take a final decision by passing a reasoned order within a period of five months from the date of receipt/production of a copy of this order.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.11.2018
Transmission Date	

