

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16333 of 2017

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Lal Babu Singh, aged about 40 years, S/o Shri Raja Ram Singh, resident of Village-
Milki Tola, P.O. Nagraun, P.S. Charpokhri, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna. null null
4. The Inspector General, Prison and Correctional Services, Bihar.
5. The Special Secretary, Home Department (Special Branch), Bihar, Patna.
6. The Joint Secretary cum Director (Administration), Bihar, Patna.
7. The Superintendent, Mandal Kara, Nawada, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Kumar Prasad

For the Respondent/s : Md.Nadeem Seraj - GP5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-07-2018

Heard the parties.

In the present case, the petitioner is challenging the order passed by the Inspector General, Prison and Correctional Service, Bihar, Patna vide Memo No. 3406 dated 30.06.2017 whereby and whereunder he has been awarded the minor punishment of “Censure” and “Warning”. Further prayer has been made for quashing the order of appellate authority vide Memo No. 5351 dated 09.09.2017 whereby and whereunder the appeal of the petitioner has been rejected and affirmed the order passed by the disciplinary authority.



Brief facts of the case that the petitioner was posted as Deputy Superintendent of Mandal Kara Jail at Nawada and joined there on 30.06.2014. As per the Jail Manual kerosene oil used to be supplied for the lightening of Jail wards, where the prisoners abode. It is also mentioned that when the petitioner had gone there, he found that two groups were operating, one group was led by Bhavshagar and another group was led by Naveen Singh and they were running their own mess separately, when he found aforesaid situation was prevailing, he had taken very hard steps, on that account the meal for all prisoners started preparing in the common kitchen. Time to time, the petitioner with the assistance of the administration had made inspection and searched the Jail ward, recovered huge quantity of incriminating materials that led to creation of surcharge atmosphere and inmates of jail were not happy, ultimately they had gone for fasting. On 27.07.2014 at 11:00 hours one Rupesh Paswan committed suicide sprinkling kerosene oil and set ablaze his body. He was carried to the hospital without delay and for better treatment he was referred and shifted to PMCH where he was kept in an emergency ward but on next day 28.07.2014 at 02:15 hours he was declared dead. When the administration could know about this incident, Sub-Divisional Officer and Deputy Superintendent of Police had made joint



inspection of the Jail premises. They recorded the statement of different persons in the jail and it transpired to them that Deputy Superintendent of Jail had recovered the mobile phone which was being used by different prisoners. They were not happy as they were not allowed to run their respective kitchen as well they were also opposing different actions taken by Jail Superintendent. On 24.07.2014 under trial prisoner namely Upendra Yadav @ Bhawsagar Yadav of ward no.4 was sitting near the ward no. 4 was talking on mobile phone which identified by Jai Mangal Ram and Baleshwar Tiwari who informed to jail administration as well as tried to seize the same but that mobile was handed over to another prisoner. On that account Bhawsagar Yadav had entered into altercation with those two persons and started hurling abuses.

On next day i.e. on 25.07.2014 one mobile phone was recovered from exit pipe of septic tank and for that a case was instituted against unknown persons on that account some prisoners had gone for fasting, raising the allegation that they were not being provided ration as per the Jail Manual, also raised an issue that they were not treated properly. On intervention of petitioner they had withdrawn the fasting on 26.07.2014 on the same day they were produced before the court. On 27.7.2014 again the inspection was carried out of ward, seven mobile phone, one charger and



eight knives were recovered from the there. It was also transpired during inspection that the said Rupesh Paswan had mobile phone he was lending his mobile phone to other prisoners on payment of service charge, in this manner he was earning money. On that account he was also feeling depressed became a soft target. On the same day he sprinkled Kerosene oil and put fire on his body and later on died. Joint inspection team did not find any dereliction of duty was committed by the petitioner whereafter again the DIG has made an inspection of the jail, reiterated the same what has been earlier recorded by the earlier inspecting team, he also did not find any incriminating material against the petitioner. DIG in his report stated that after his joining he had taken prompt action against the unruly prisoners to bring them under control on that account some unruly prisoners had gone for fasting taking a plea of non supply of food material as per the jail manual

With regard to self immolation he recorded the finding that no such allegation has been made against the petitioner nor to have found his hand in commission of self immolation by Rupesh Paswan. It also appears that the inspection was made by the Superintendent of Jail who found, all the allegations made by the Chandramuni Devi wife of the deceased was without any substance and without any basis and further stated that matter was



inquired by the District and Session Judge, Nawada did not find any incriminating material against the petitioner granted clean chit. The Superintendent of Jail, Nawada had made an inspection, submitted his report to the District Magistrate, Nawada wherein he has recorded that the incriminating materials were being brought to the Jail premises without any check and alleged that as the petitioner was Deputy Superintendent it was the responsibility to enforce the discipline in the Jail, recommended for initiation of a departmental inquiry and on his recommendation Prapatra – K was issued giving the detail of fact as well as the matter was brought to Human Right Commission, and the Human Right Commission on consideration of entire facts and circumstances, recorded as follows:

“Prima facie it looks that even Jail authorities are responsible for the death of the prisoner, it is the case of the Jail authorities that the prisoners used kerosene oil and match sticks to burn himself. Normally, neither kerosene oil nor match sticks should be available with the prisoner”.

In Prapatra K entire incident of event of suicide has been mentioned which is as follows:

“Prima facie it looks that even jail authority are responsible for the death of prisoner. It is the case of jail authority that the prisoner used kerosene and match sticks to burn himself. Normally, neither kerosene nor match sticks should be



available with the prisoners”

The report of District Magistrate vide letter no. 735 dated 26.02.2016, photocopy of relevant portion of Jail Manual and the report dated 07.11.2014 of Human Right Commission have been mentioned as memo of evidence. The petitioner appeared and filed his explanation, submitted that under the Jail Manual, quoting different provisions of Jail Manual, the kerosene oil is required to be supplied for the purposes of burning lamp in the night time and including the match sticks. It is further stated that in the morning all lamps are recovered and whatever quantity of kerosene oil are left, are again redeposited in the store. In the evening again kerosene oil is supplied for burning the lamp. The explanation has been given that the power position in Nawada was not proper and it requires as per the Jail Manual that proper lightening should be done in the Jail wards for the purposes of providing light to the prisoners as well as persons who were posted to guard, accordingly the enquiry report was submitted, in which it has been mentioned that the petitioner was not responsible for the act committed by Mr. Paswan but as he was administrative head, he was to ensure proper atmosphere and failed to have proper administrative control. The enquiry report reflects that the charges were found to have been proved against the warders namely Anirudh Pandit and Bachu Singh also mentioned



that as the petitioner failed to take proper steps to create a proper atmosphere in the Jail and failed to control two gangs operating in the jail, so ultimately found that the charges partially proved. The petitioner was served second show cause along with the inquiry report. The petitioner filed his explanation, explained, the petitioner cannot be held responsible for suicidal death of Late Paswan. The disciplinary authority considered the entire facts in detail and he has also recorded that on the date of incident, the present petitioner had made inspection of Jail wards, incriminating materials were recovered, mentioned that all possible actions were taken inasmuch as the petitioner had taken all necessary steps to end the factionalism in the Jail but at the end mentioned that he was expected to maintain the administrative control which was his responsibility to keep the prisoner safe and passed the order for Censure and also reprimanded, recommended for improvement of his working efficiency.

The petitioner filed an appeal, the appellate authority has rejected the same. Primarily the petitioner has raised the point that in the enquiry report it has not been mentioned that the petitioner was in any manner overtly and covertly was found sided with any group of the prisoner. Records show that after his joining the prisoners were not very happy on account of fact that that he had taken drastic steps to control two gangs operating in the Jail had



tried to enforce the discipline. After his joining, time to time the inspection was made incriminating materials were recovered from different Jail wards and Rupesh Paswan had committed suicide on account of depression.

So far the punishment is concerned, he has submitted that when he has not committed any misconduct, awarding punishment of Censure is not proper, on that account, petitioner has been deprived of consideration for promotion which led to promotion of certain juniors. He has further submitted that the inquiry was not conducted properly as no witness was examined to prove the charge against him. Further submitted that failure to achieve highest degree of efficiency cannot be subject matter of disciplinary proceeding as Hon'ble Supreme Court has held failure to maintain the highest degree of efficiency cannot be treated as misconduct. Reliance can be placed on the Judgment of Hon'ble Supreme Court in the case of Union of India & Ors. Vs. J. Ahmed, reported in AIR 1979 SC 1022 and Vinyl Products Vs. Ram Ujjagar and others, reported in 2008 (1) LLJ 708.

Learned counsel for the State has submitted that the punishment is a minor as he was expected to maintain the proper discipline in the jail which he had utterly failed, on that account the punishment has been awarded.



Having considered the rival contentions of the parties, from the reports that has been attached with the present writ petition including the inquiry report and the order of punishment which has been inflicted upon the petitioner one thing is very clear that when the petitioner had joined at Nawada Jail he had taken prompt action against two gangs operating in the jail, one was led by Bhavsagar Yadav and another was led by Naveen Singh. He had also taken all coercive measures from time to time by making inspection of wards from time to time, incriminating material were also recovered, it has also been recorded by the different authorities that there was no dereliction of duty on his part or any failure on his part to maintain discipline in Jail, but abruptly the Inquiry Officer as well as disciplinary authority arrived to conclusion that as he had failed to maintain the discipline on that account this incident was taken place and recorded a finding that charges were proved.

This Court is of the view that inquiry was not done in a proper manner as no one has come forward to prove that how the petitioner had failed to maintain the discipline in Jail. But in contra, it appears that he had taken all sorts of measure to enforce discipline in Jail but as Rupesh Paswan had kept the kerosene oil in a plastic bottle stealthily later on he had sprinkled the kerosene oil



on his body and lit the fire.

Looking to the entire fact and circumstances, this Court does not find any imputation can be made against the petitioner for any dereliction of the duty and order of punishment passed by the disciplinary authority against the petitioner for inflicting the punishment is quashed.

Accordingly the order dated 30.06.2017 passed by the disciplinary authority as well as order dated 09.09.2017 affirmed by the appellate authority are hereby quashed.

It is made clear that if Departmental Promotion Committee vide his proceeding dated 27.12.2016 has kept the result of the petitioner in a sealed cover that will be opened and necessary action will be taken in accordance with law.

Accordingly, this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/Sunny

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.08.2018
Transmission Date	NA

