

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1885 of 2019

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S. M. Wakil Ahmad, son of Late S.M. Zubair Ahmad, Resident of Ahmad,
Village- Indirapuri Colony, Samanpura Raja Bazar, P.S.- Shashtrinagar, Patna
14, Distt.- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Bihar.
4. The Inspector General of Police (Head Quarter) Bihar, Patna.
5. The Inspector General of Police (ABHIYAAN) Bihar, Patna
6. The DIG Tirhut Range, Muzaffarpur.
7. The Deputy Inspector General of Police, Champaran, Bettiah.
8. The Superintendent of Police, Sheohar.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Advocate
For the Respondent/s : Mr. Manish Kumar, G.P.-4
Mr. Ajay Kumar, A.C. to G.P.-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

C.A.V. JUDGMENT

Date : 20-12-2019

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

2. In the present case, the petitioner is challenging the
order contained in memo no. 4298 dated 18.05.2018 (Annexure-



27 to this writ petition), whereby and whereunder the petitioner has been inflicted with major punishment of Censure and withholding of two increments with cumulative effect. Further prayer has been made to stay the effect of the order contained in the said memo, as stated hereinabove.

3. The present matter relates to the S.D.P.O. rank Officer in the capacity of Supervisory Authority to make proper supervision of the criminal cases pending within his jurisdiction. At present the petitioner is posted as Superintendent of Police in the Bihar State Human Rights Commission, claiming that his entire service record is unblemished and has been appreciated by his higher officials. The petitioner has been departmentally proceeded with respect to Shyampur Bathan P.S. Case No.59 of 2010 and Purnahia P.S. Case No.93 of 2011, in which one Santosh Jha was an accused and he was named in various criminal cases. He was apprehended by the Motihari Police in Ranchi in connection with Motihari Mufassil P.S. Case No. 23 of 2012 and he was also required to be remanded in Shyampur Bathan P.S. Case No.59 of 2010 and Purnahia P.S. Case No.93 of 2011.

4. The process of remand is that, if an accused has



been taken in judicial custody in a particular case and he was also required to be remanded in another criminal case, the proper application has to be filed for Production Warrant in the Court where he is required to be remanded and accordingly, that Court would issue the Production Warrant and accordingly, the Court, in which the accused has been kept in judicial custody, will issue remand order and thereafter he will be remanded to the Court where he is required. In such view of the matter, as stated hereinabove, accused - Santosh Jha was arrested by Motihari Police in Ranchi and he was required to be remanded in the Court of Sheohar and the Investigating Inspector has filed an application in the Court concerned conducting Shyampur Bathan P.S. Case No.59 of 2010 and Purnahia P.S. Case No.93 of 2011 for issuance of Production Warrant but, the same could not be processed in time and placed before the Motihari Court, accordingly, accused - Santosh Jha, on grant of bail, could not be remanded in Shyampur Bathan P.S. Case No.59 of 2010 and Purnahia P.S. Case No.93 of 2011 but, later on, accused - Santosh Jha was apprehended by the Police and was produced in the Sheohar Court dealing with Shyampur Bathan P.S. Case No.59 of 2010 and Purnahia P.S. Case No.93 of 2011.

5. After the release, the Director General of Police,



Bihar, Patna, issued direction upon the Deputy Inspector General of Police, Champaran, Bettiah, to submit the report in the matter relates to release of said accused namely, Santosh Jha. In pursuance thereof, the Deputy Inspector General of Police, Champaran, Bettiah, submitted the report to the Director General of Police, Bihar, Patna, wherein he has given his opinion that the action of the Superintendent of Police reflects that it was a lack of interest or seriousness in obtaining the warrant of remand in connection of Shyampur Bathan P.S. Case No.59 of 2010, Purnahia P.S. Case No.93 of 2011 and Riga P.S. Case No. 174 of 2009. It has also been opined that if he was feeling some difficulties, he should have contacted the Superintendent of Police and ought to have taken his help but, from the report it appears that the Investigating Inspector has filed an application for Production Warrant but, the order could not be issued in time, led to release of accused - Santosh Jha. Whereafter, the Inspector General of Police (ABHIYAAN), Bihar, Patna, vide memo no. 617 dated 23.05.2012 issued a letter to the Deputy Inspector General of Police, Champaran, Bettiah, and informed the Officers on whose lack of interest and inefficiency the accused - Santosh Jha could not be remanded in cases mentioned in the said letter, with respect to Shyampur



Bathan P.S. Case No.59 of 2010 and Purnahia P.S. Case No.93 of 2011 and Piprahi P.S. Case No.28 of 2011, three to four persons have been held to be responsible for failure to obtain and execute the Production Warrant for taking accused - Santosh Jha on remand. In connection with Sheohar Piprahi P.S. case, the S.D.P.O. has been held to be one of the officers responsible at whose inefficiency and lack of interest accused - Santosh Jha was released.

6. The Superintendent of Police, West Champaran, Bettiah, placing reliance on the letter contained in memo no. 617 dated 23.05.2012 and memo no.1107 dated 27.04.2012, recorded that the persons mentioned therein were found to be *prima facie* responsible for failure to obtain the Production Warrant of remand of accused - Santosh Jha and it has been decided to hold inquiry against the Police officials upto the rank of the Superintendent of Police and directed to obtain explanation from the Deputy Superintendent of Police and the comment should be forwarded to the Inspector General of Police for his perusal. Hence, direction was given to the Superintendent of Police, Motihari, Sitamarhi and Sheohar, respectively, to obtain the explanation of the respective Deputy Superintendent of Police within a period of one week and submit the same so



that the inquiry proceeding could be initiated against them. In compliance of the said letter, the Superintendent of Police, Sheohar, vide office order dated 06.10.2012 addressed a letter to the present petitioner, giving the details of the fact and asked him to furnish his explanation on the point of failure to obtain the Production Warrant of accused - Santosh Jha, in connection with the cases, as mentioned above, lying in the Courts of the concerned Judicial Officers of Sheohar District. In the said letter, it has also been mentioned that the petitioner has not shown proper degree of seriousness for obtaining the Production Warrant, which is basically his responsibility. It has further been mentioned that it is the responsibility of the Investigating Inspector to obtain the Production Warrant from the concerned Court by properly pursuing the matter but, laxity has been shown in pursuing the same.

7. In compliance of the said letter, the petitioner filed his explanation and stated that he has taken all steps for obtaining Production Warrant and the Investigating Inspector has to file the application for such purposes and he has orally requested and persuaded to follow up the matter for obtaining proper Production Warrant. It has also been stated that while Production Warrant was obtained, by that time, accused -



Santosh Jha, was released on bail. It has also been stated in the explanation that the Investigating Inspector has filed the application for Production warrant and impression was given by the '*Peshkar*' of the concerned Court that the Production Warrant will be sent to the concerned Court, so there was no lack of interest or any deficiency on his part in making supervision of the case. After receipt of the explanation, the Superintendent of Police, Sheohar, gave his comment and forwarded the same in his letter contained in memo no. 2385 dated 08.08.2012, mentioning therein that there was a mistake in proper supervision as the petitioner has not given written direction to the Investigating Officer to obtain the Production Warrant, so *prima facie*, it appears that there is lack of proper supervision. The Deputy Superintendent of Police, West Champaran, Bettiah, vide his letter no. 1623 dated 20.08.2013, addressed to the Inspector General of Police (ABHIYAAN), Bihar, Patna, mentioned that as the petitioner has not given written direction for obtaining Production Warrant, it shows deficiency in proper supervision and accordingly, addressed a letter to the Additional Secretary, Government of Bihar, Home (Police) Department, vide dated 23.12.2012, recommended for initiation of departmental proceeding against the petitioner,



attaching the draft memo of charge, which was approved by the D.G.P., Bihar, Patna. Accordingly, the charge memo dated 12.08.2014 was framed, mentioning the fact that accused - Santosh Jha was required in different cases so proper effort was required to be taken by the Investigating Officer for obtaining the Production Warrant but, by filing an application they thought that their work has been completed, which reflects the serious negligence on the part of the Supervisory authority.

8. On receipt of the charge-sheet, the petitioner has submitted his explanation, in which he has given the details of the fact and stated that he has taken all steps and properly supervised the case and given direction to the Investigating Inspector and in pursuance thereof, the Investigating Inspector has filed an application for issuance of Production Warrant before the concerned Court but, lack of interest shown by the Investigating Inspector, so the Production Warrant could not be obtained from the Court concerned and he was not at fault in making supervision of the case. It has further been stated that while making supervision of the case, time without number, he has given oral direction to the Investigating Inspector to take proper action but, he has failed to do so and requested to accept his explanation and he should be discharged from the charges



levelled against him. Along with the explanation, the petitioner has also attached the photocopy of the case diary, showing that the Investigating Inspector has filed the proper application in the Court concerned and he was asked by the Court to come after three to four days but, production warrant has not been given. In paragraph no. 194 of the case diary, it has been mentioned that the Investigating Officer has appeared in the office of the S.D.P.O. and directed for obtaining the Production Warrant but, the Production Warrant was not ready, accordingly, the Court informed that Production Warrant will be sent. Paragraph no.636 of the case diary has been placed reliance by the petitioner, from where it appears that the accused - Santosh Jha was in custody in connection with Motihari P.S. Case No. 23 of 2012 and application was filed for issuance of Production Warrant. The explanation of the petitioner was sent to the Director General of Police, Bihar, Patna, to give his comment on the same, the Director General of Police, Bihar, Patna, has sought comment from the Deputy Director General of Police on the explanation submitted by the petitioner. Accordingly, he has considered the explanation of the petitioner sympathetically and agreed with the same. In the said letter, the Deputy Director General of Police, Tirhut Division, Muzaffarpur, has stated that from the



case diary, it appears that proper application was filed for issuance of Production Warrant but, the same could not be obtained in time, if the Investigating authority could have taken proper action in time, the Production Warrant could have been obtained, itself reflects the lack of interest on the part of the Investigating authority and did not find anything against the present petitioner.

9. The matter was travelled to the Inspector General Of Police, Head Office, Bihar, Patna, who considered the explanation of the petitioner and the comment of the Deputy Inspector General of Police, Tirhut Division, Muzaffarpur, and agreed with the explanation offered by the petitioner and it has been mentioned that the same was placed before the Director General of Police, Bihar, who has approved the same. Thereafter, the same was placed before the Special Secretary, Government of Bihar, who has also accepted the explanation of the petitioner and gave his opinion that he may be considered for exoneration from the charges levelled against him and placed it for approval from the Hon'ble Chief Minister and the Hon'ble Chief Minister has made an endorsement "VIMARSH" in the file and thereafter U-turn was taken by the Department and relegated the matter to the Principal Secretary and the Joint



Secretary for continuation of the departmental proceeding having recorded that the present petitioner has not given written direction, only has orally directed the Investigating Inspector for obtaining the Production Warrant and the comment given by the Department does not reflect that the petitioner was diligent in carrying out his responsibility. He has not discharged his work in efficient manner in such a sensitive and said that the explanation offered by the Police Headquarters is not fully acceptable and recorded that the proceeding should be continued against him. It has further been recorded that the present petitioner has dis-obeyed the orders of Senior Officers, failing to take the accused- Santosh Jha on remand as he failed to give the written direction, which benefited the accused - Santosh Jha, ultimately, it was decided to hold inquiry by the Commissioner of Departmental Inquiry and Sri Rajesh Tripathi, Inspector General of Police (Welfare), Government of Bihar, Patna, was appointed as Presenting Officer and he will also be treated to be the representative of the Department. Accordingly, a full fledged proceeding was initiated by serving the charge memo upon the petitioner and asked him to submit explanation in a tabular form. Accordingly, the petitioner has submitted his explanation in tabular form against each charge and requested to exonerate



him of the charges levelled against him. In turn, Inquiry Officer, asked representative of the Department to give his comment, accordingly he has made comment on each explanation furnished by the petitioner. With respect to charge no.1, he has not made any comment and supported the petitioner by submitting that there was no laches on the part of the petitioner in supervising the case. It has also been recorded that it was the laches on the part of the Investigating Officer as formally the Production Warrant was to be obtained by him. With respect to charge no.3, the explanation offered by the petitioner has been accepted by the Department. Thereafter, the same was placed before the Inquiry Officer, then the Inquiry Officer submitted the report and recorded that it was not proper for the Department to accept the explanation of the petitioner otherwise, there was no reason for the department to initiate a proceeding when they have accepted the explanation, dis-agreed with the report of the Department and finally recorded that charge no.1 not proved, charge nos.2 and 3 partially proved.

10. On receipt of the same, the Deputy Secretary, Government of Bihar, vide letter no. 7475 dated 14.09.2017 has asked second show-cause from the petitioner on the report submitted by the Inquiry Officer. In pursuance thereof, the



petitioner has given a detailed explanation why he should be exonerated from the charges and taken plea that he has carried out the work diligently and never carried out the supervision in a negligent manner and has done proper supervision of the case, requested to accept the explanation submitted by him and exonerate from the charges levelled against him. From Annexure-26 to the writ petition, it appears that the Deputy Secretary, Home (Police) Department, in his file notings dated 30.10.2017 recommended the acceptance of the explanation offered by the petitioner. Thereafter, the higher authority has recorded in the file and directed for “VIMARSH” and whereafter stand was changed and ultimately, the petitioner has been awarded the punishment of Censure and withholding of two increments with cumulative effect.

11. In the present case, the State has filed its counter affidavit and not denied the facts mentioned in the writ petition but, plea has been taken by the State that the petitioner has not given any written direction to the Investigating Officer for obtaining the Production Warrant.

12. Having considered the rival contentions of the parties and having gone through the records, it appears that



when the proceeding was initiated against the petitioner, the explanation submitted by him was accepted by the Department. Even after the stage of departmental proceeding, the department has filed its comment and recorded that the explanation offered by the petitioner should be accepted as the Department has not found any dereliction of his duty in performing the work of supervision of the case. Further, it appears that the departmental proceeding has not been done in a proper manner as the Inquiry Officer only on the basis of explanation submitted by the petitioner as well as on the basis of the comments given by the Department recorded his finding. There is no material to show that the charges which are levelled against the petitioner of dereliction of duty has been proved even applying the principle of 'Preponderance of Probability' as the Department has not brought any material to show that the petitioner, in any way, has acted *dehors* to the guidelines as a Supervisory authority. Furthermore, from the case diary, it appears that the application was filed before the Court concerned and impression was given by the ministerial staff of the Court that Production Warrant will go to the Court concerned. It also appears that verbally the petitioner has given direction to the Investigating Officer to take follow up action but, when the Production



Warrant was issued, by that time, the accused- Santosh Jha, a notorious criminal, was released on bail but, later on, he was apprehended by the Police.

13. So, in the present case, two issues are apparently clear that the Department has not brought any material to substantiate the allegation made against the petitioner as the Inquiry Officer has proceeded from the materials on record whether the charges have been proved against him or not, when the Presenting Officer has accepted the explanation of the petitioner holding that there is no dereliction of duty on the part of the petitioner in conducting the supervision of the case, then there is no question of holding the charge proved against him. The charges can be proved only on the basis of materials, which is completely lacking in the present case, inasmuch as, if the Department was so sanguine, then in that circumstances, proper evidence should have been brought by oral evidence as well as documentary evidence, which has not been brought in the present case, as stated herein-above. So, in my view, the prosecution has failed to make out a case against the present petitioner rather, the prosecution itself has supported the present petitioner having found that he has properly supervised the case.



14. In such view of the matter, the order of punishment contained in memo no.4298 dated 18.05.2018 does not sustain, accordingly, the same is set aside.

15. Accordingly, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	18.12.2019
Uploading Date	21.12.2019
Transmission Date	

