

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24240 of 2018

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Hare Krishna Kumar Son of Nand Kishore Sharma Resident of Village- Nath
Kharsa, P.S.- Mehandia, District- Arwal

... .. Petitioner

Versus

1. The State Of Bihar through the Director General of Police, Govt. of Bihar,
Patna
2. The Deputy Inspector General of Military Police, North Zone, Muzaffarpur
3. The Commandant Bihar Military Police (B.M.P.)-6, Muzaffarpur
4. The Conducting Officer-cum-Inspector of B.M.P.-6, Muzaffarpur
5. The Superintendent of Police, Arwal District- Arwal
6. The S.H.O., Arwal Police Station, District- Arwal
7. The Director General Of Police, Bihar, Patna

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ram Hriday Prasad, Advocate Mr. Dhananjay Kumar Pandey, Advocate Mr. Ashok Kumar Singh, Advocate
For the Respondents	:	Mr. Ajay Kumar, AC to GP-4

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 09-09-2019

I have heard learned counsel appearing on behalf of the
petitioner and learned A.C. to G.P.-4 for the State of Bihar.

2. The petitioner, at the relevant point of time, was
posted as a Havildar in Bihar Military Police-6 at Muzaffarpur. It
is alleged that in the intermediate examination, which was being
held in High School, Umerabad in the district of Arwal, the
petitioner was found helping a female examinee in adopting
unfairmeans. When the petitioner's conduct was objected to by the
Centre Superintendent of the examination, he is said to have



misbehaved with him and others also, who were on examination duty. His conduct led to registration of a criminal case, as Arwal P.S. Case No.55 of 2015, for the offences punishable under Sections 447, 186 and 353 of the Indian Penal Code and Section 10 of the Bihar Conduct of Examination Act, 1981, and initiation of a departmental proceeding as well.

3. The disciplinary proceeding culminated into imposition of punishment of dismissal from service by an order issued vide Memo No.93, dated 27.08.2016, passed by the Commandant, Bihar Military Police-6, Muzaffarpur. The petitioner's appeal, preferred against the said order of dismissal, came to be dismissed by an order dated 20.02.2017. The petitioner has preferred a memorial before the Director General of Police, which, too, has been dismissed by order dated 31.08.2018 (Annexure-14). The criminal case has ended up in with acquittal by a judgment and order dated 14.06.2019 passed by the learned Chief Judicial Magistrate, Arwal, in Trial No. 558 of 2019. A copy of the judgment and order passed by the learned Chief Judicial Magistrate, Arwal, has been brought on record by way of annexure to the reply filed on behalf of the petitioner to the counter affidavit of respondent No.3.

4. The order of the disciplinary authority, dated 27.08.2016, and the order of the Director General of Police, dated, 31.08.2018, have been put to challenge in the writ application. The



order passed by the appellate authority was not challenged in the main writ application. However, I.A. No. 1 of 2019 has been filed for amending the writ application in order to seek quashing of the order of the appellate authority dated 20.02.2017. A prayer has also been made for impleading the Director General of Police as respondent No.7 in the writ application.

5. Since the order of the appellate authority arises out of the same departmental proceeding, I.A. No. 1 of 2019 is allowed.

6. The petitioner is, thus, permitted to question the correctness of the order of the appellate authority dated 20.02.2017. Let Director General of Police be impleaded as party respondent No.7. The averments made in I.A. No. 1 of 2019 shall form part of the pleadings of the writ application.

7. As can be easily noticed from the charge memo, the sole allegation against the petitioner was that he was found aiding an examinee of intermediate examination, being held in High School, Umerabad, Arwal, in adopting unfair means. He was in his police-uniform, though not on duty and had misbehaved with the Centre Superintendent and other officials/personnel, who were engaged in the examination duty.

8. The petitioner had denied the charge by filing written statement of defence. Departmental enquiry was held by a Police Inspector. There were three witnesses, which the department intended to produce before the Enquiry Officer in support of the



charge, including the Centre Superintendent of the school, namely, Mainuddin. The Enquiry Officer held the charge framed against him partly proved. He recorded in his finding that the Officer In-charge of the Police Station, who had got the First Information Report lodged in haste, showed a tendency to avoid the departmental enquiry, despite repeated reminders. He has noted the evidence of the Centre Superintendent and has commented that the occurrence, which had happened, was not as grave as had been described in the First Information Report. Based on the report of the Enquiry Officer and keeping in mind that charge sheet was submitted in the criminal case, the disciplinary authority, by his order dated 27.08.2016, imposed upon the petitioner punishment of dismissal from service. As has already been noticed above, the petitioner's appeal and memorial have been rejected by the Deputy Inspector General of Police and the Director General of Police.

9. Learned counsel appearing on behalf of the petitioner has drawn my attention to the report of the Enquiry Officer and has submitted that it is a case of no evidence inasmuch as there was no material at all before the Enquiry Officer to reach a conclusion that the charge against the petitioner stood proved. He has submitted that as a matter of fact, the Enquiry Officer himself expressed his inability to record such finding in the background of nature of evidence of the Centre Superintendent of the examination and in the absence of the Officer-in-charge of the



Police Station as witness, throughout the departmental enquiry, despite repeated reminders. He contends that there was no evidence before the Enquiry Officer to prove the charge against the petitioner, which related to an occurrence, which had allegedly taken place within the campus of the school.

10. He has also submitted that in view of the acquittal recorded by the trial Court in the criminal case, the fact of filing of the charge sheet in the criminal case as ground for the disciplinary authority to hold the petitioner guilty of the charge, is completely erroneous and renders the finding of guilt perverse.

11. Learned A.C. to G.P.-4, defending the order of the disciplinary authority, has submitted that strict rules of evidence have no application in departmental proceeding and based on cogent materials, which were available in the departmental proceeding, the disciplinary authority rightly reached the conclusion of petitioner's guilt. He has submitted that conduct of the witness in the departmental enquiry itself has become doubtful inasmuch as he refused to prove his own report.

12. I have carefully gone through the report of the Enquiry Officer. In my opinion, there is no finding recorded by the Enquiry Officer that the charge levelled against the petitioner have been proved. He has, with certain degree of hesitation, held the charge against the petitioner partially proved. While saying so, the Enquiry Officer has blamed the Officer In-charge of the Police



Station for acting in haste in registration of the First Information Report. The Centre Superintendent did not support the charge as levelled against the petitioner. Neither the Officer In-charge of the Police Station-cum-Investigating Officer, Arwal, nor the Deputy Superintendent of Police, who was the Enquiry Officer of the case, turned up in the departmental enquiry to support the charge. One reserve Sub Inspector of Police was examined. He has proved only the documents relating to initiation of departmental enquiry, filing of reply by the petitioner and other documents. He has not proved either the occurrence or the alleged misconduct of the petitioner.

13. In the above background, in my opinion, learned counsel appearing on behalf of the petitioner is correct in his submission that it is a case of no evidence. There was absolutely no evidence before the Enquiry Officer or the disciplinary authority, based on which the charge against the petitioner could be said to have been proved. The finding recorded by the disciplinary authority of the petitioner's guilt is, therefore, perverse and the action taken thereon requires interference by this Court.

14. Accordingly, the impugned order of dismissal from service, dated 27.08.2016, passed by the Commandant, Bihar Military Police-6, Muzaffarpur; the order, dated 20.02.2017, dismissing petitioner's appeal, preferred against the said order of dismissal, and the order, dated 31.08.2018, passed by the Director



General of Police dismissing the memorial of the petitioner, are hereby set aside. As a consequence of the setting aside of the order passed by the disciplinary authority, the petitioner shall be required to be reinstated with all consequential benefits.

15. In the facts and circumstances of the case, since the order of disciplinary authority is being interfered with on the ground of no evidence, the petitioner shall be entitled to full back wages and other benefits.

16. This writ application is allowed.

17. There shall be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.10.2019
Transmission Date	N/A

