

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14901 of 2019

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1. Sachchidanand Shahi, male, aged about 33 years, Son of Late Pandit Shahi, resident of Village and Post- Balthari, P.S.- Kuchaykot, District- Gopalganj, Home Guard No. 3093.
 2. Lalan Singh, male, aged about 51 years, Son of Late Chandrika Singh, resident of Village- Dharmvaari, P.O.- Safiyavad, P.S.- Naikunthpur, District- Gopalganj, Home Guard No. 4157.
 3. Amardev Sah, male, aged about 65 years, Son of Late Vriksha Sah, resident of Village- Hariharpur, Post- Ekderava, P.S.- Yadopur, District- Gopalganj, Home Guard No. 3056.

... .. Petitioner/s

Versus

1. Principal Secretary, Home Department (Special Branch), Old Secretariat, Government of Bihar, Patna.
2. Director General-cum-Commandant General, Bihar State Home Guards, Chhaju Bagh, Patna.
3. District Commandant, Bihar State Home Guards, Gopalganj.
4. District Magistrate, Gopalganj.
5. Superintendent of Police, Gopalganj.
6. Officer in Charge, Kuchaikot Police Station, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binodanand Mishra, Adv.
For the Respondent/s : Md. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 29-07-2019

The petitioners are the members of the Home



Guard Force, who, at the relevant time, were posted at the Kuchaikot check-post, Gopalganj. By order dated 02.11.2018 contained in Memo No. 1157, issued under the signature of the District Commandant, Bihar Home Guards, Gopalganj, the petitioners have been dismissed from service.

2. Mr. Binodanand Mishra, learned Advocate for the petitioners submits that ten Home Guards with different charges were subjected to a rudimentary departmental proceeding, viz., putting them to a show-cause notice to explain their cause with respect to different charges, varying from not acting responsibly, resorting to illegal collection at a particular toll in a police station, making available prohibited articles to inmates of jail etc. With respect to the petitioners, it has been submitted that they were captured in a video-clip (C.C.T.V. footage), giving an impression that they were collecting money from some passers-by or from owners of the vehicles which crossed through that particular check-post. The case of the petitioners along with other Home Guards were decided by



a composite order rejecting their explanation and, thereafter, dismissing them from service.

3. Mr. Mishra, learned Advocate has further submitted that the petitioners have reiterated that the only reason for challenging this order is the vice of the order being non-speaking with respect to the explanations offered by the petitioners or the reasons for rejecting such explanations. It has been submitted that only one petitioner, out of the four petitioners, was captured in the C.C.T.V. footage and that also only showing him as counting the money which was taken out from his own pocket at the asking of the police party/flying squad.

4. It has been submitted on behalf of the petitioners that counting of money is not an offence or misdemeanor, unless it is proved that it was a tainted money. The C.C.T.V. footage, even if accepted in totality, cannot be a proof of the fact that the money which was counted by one of the petitioners from his pocket was tainted one. In fact, while the petitioners were on duty, they were confronted by the police party and asked to take



out everything which they had in their possession and pursuant to such direction, notes were counted by one of the petitioners which was captured in the C.C.T.V. footage.

5. What was the amount of money, from whom was it collected and under what circumstances is not reflected from the C.C.T.V. footage. The explanations offered by the petitioners have not been taken into account at all. Had those been taken into account, it must have been mentioned in the order. There is a presumption of no consideration on such explanations, as the order is non-speaking.

6. The learned counsel for the petitioners has further submitted that even in a quasi-judicial order or administrative order, there is a necessity of speaking out reasons. If any such order is amenable to scrutiny by the Courts of law, the Courts of law would have no material to assay such orders. Therefore, it has been held in number of cases that reasons are the life and soul of an order and can be likened to its heart beat. Once the beat stops, the life goes out and so does the order.



7. In the present case, the order has become lifeless so far as the petitioners are concerned because it does not advert to any of the grounds taken in defence of the petitioners and the reasons for rejecting such defense in totality.

8. The order impugned in the present petition with respect to the petitioners, therefore, is not sustainable in the eyes of law and is set-aside accordingly.

9. It is too late in the day to recount the necessity of an order to be a reasoned one. It prevents, in the first instance, the authority to act in an arbitrary manner and secondly, it is intelligible to such persons who are adversely affected by such order.

10. The order impugned is thus set-aside.

11. The case is remitted to the author of the order, viz., the District Commandant, Home Guards, Gopalganj (respondent No. 3) to write out a fresh order in accordance with law, giving reasons for rejecting the application of the petitioners. The order be passed within a period of four weeks of the receipt/production of a copy of this order.



12. The writ petition stands allowed and disposed
off accordingly.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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