

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1583 of 2017

In
Civil Writ Jurisdiction Case No.8415 of 2017

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
 3. The Director General of Police, Bihar, Patna.
 4. The Inspector General of Police (Headquarter), Bihar, Patna.
 5. The Additional Secretary, Home Department, Government of Bihar, Patna.

... .. **Respondents- Appellant/s**

Versus

Sanjay Kumar Singh, son of Daroga Singh, resident of Village+ P.O.-Pipra Kalan, P.S.-Narahi, District-Baliya (U.P.).

... .. **Writ petitioner- Respondent/s**

Appearance :

For the Appellant/s : Mr. P. K. Verma, AAG-3
Mr. Saroj Kumar Sharma, AC to AAG-3
Mr. Suman Jha, Advocate

For the Respondent/s : Mr. Siddhartha Prasad, Advocate
Mr. Kaustubh, Advocate
Mr. Om Prakash Kumar, Advocate
Mr. Sunit Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-02-2019

This intra-court appeal has been preferred by the State of Bihar contending that the learned Single Judge while proceeding to quash the punishment order of the respondent-petitioner has erroneously proceeded to base its assessment on the strength of the file notings which ought not to have been taken into account keeping in view the law laid down in the case of **Shanti Sports Club and another Versus Union of India and others**, reported in



(2009) 15 SCC 705, paragraphs 43 to 46. According to the said judgement of the Apex Court, a noting recorded in the file is merely a noting simplicitor and nothing more. It only expresses an opinion and such a noting cannot be treated as a decision of the Government. The contention raised by Shri P. K. Verma, learned Additional Advocate General-3, is that the aforesaid approach of the learned Single Judge clearly amounts to trenching upon the powers of the disciplinary authority, who had differed with the opinion of the enquiry officer and had issued the second show cause notice to the respondent-petitioner before awarding the punishment. It is the contention of Shri Verma that once the disciplinary authority had recorded his difference of opinion, it cannot be said that the second show cause notice suffered from any invalidity on the ground of it being contrary to the notings of the file. It is urged that one of the charges against the respondent-petitioner was clearly to the effect that he had not performed his duties diligently, inasmuch as, had he performed his duties by inspecting the respective police station timely, any such mishap which ultimately resulted in the death of a detainee could have been avoided. It is urged that merely because the respondent-petitioner has not been charge-sheeted in the criminal case that has been instituted against the police officials in the matter relating to



the death of a person in custody, the same does not amount to exonerating the respondent-petitioner of the charge of his deficient performance of duty which according to the learned counsel stood proved. It is on this issue that the second show cause notice had been issued and there being no satisfactory reply to the same, the said charge stood proved and the punishment was rightly awarded.

2. Shri Verma further submits that the imposition of costs on the State is also unwarranted, inasmuch as, the action against the respondent-petitioner was taken in good faith on the basis of material on record by the disciplinary authority and, therefore, the inference of *mala fides* drawn by the learned Single Judge to impose costs deserves to be set aside.

3. Defending the impugned judgment, learned counsel for the respondent-petitioner Shri Siddhartha Prasad has urged that the enquiry report is based on a joint inspection report. Neither the joint inspection report nor the enquiry report indicts the respondent-petitioner. To the contrary, the enquiry report categorically exonerated the respondent-petitioner of all the charges. It is urged that the second show cause was an outcome of suspicion with regard to the nature of the performance of the duties of the respondent-petitioner without any evidence to support the same. The allegation of the involvement of the respondent-



petitioner resulting in the death of the person concerned in custody was nowhere proved and consequently, the issuance of the show cause notice on the second occasion was a *mala fide* act for which there was no basis. This has been found by the learned Single Judge on the basis of the material on record and also after having traversed into the facts causing the death of the person in custody.

4. It is the contention of Shri Prasad that the imposition of penalty was nothing else but a predetermined effort on the part of the then Joint Secretary and this was a case of undue harassment as a result whereof the Court rightly imposed costs on the State.

5. It is, therefore, the submission of the respondent-petitioner that the allegations against the officer did not amount to any misconduct so as to invite any penalty and in the background that the State has not chosen to prosecute the answering respondent in the criminal case, the same is a sufficient indicator that the allegations against the respondent-petitioner were without foundation and any evidence. Thus, there was no material before the disciplinary authority so as to disagree with the enquiry report for the issuance of a second show cause notice. The action was absolutely unjust and so was the punishment awarded to the respondent-petitioner.



6. As a necessary corollary to his arguments, it has also been argued that the contention on behalf of the appellants about the notings of the file is incorrect inasmuch as it is the State notings that were taken into consideration and later on formed the basis for the issuance of the second show cause notice. Consequently, the learned Single Judge had to analyse the same and give a verdict thereon. This was not a case where it was only the notings in the File were considered by the learned Single Judge, but the action taken pursuant to such notings culminating in the second show cause notice and the punishment order that cumulatively was assessed for the purpose of deciding the controversy. It has further been submitted that it is undisputed that after the impugned judgement of the learned Single Judge, the respondent-petitioner was promoted on the higher post of Staff Officer on 13.12.2017 on a satisfaction of the good services of the answering respondent. He was further posted as Rail Superintendent and Additional Superintendent of Police, Jehanabad and was also awarded the meritorious services award by His Excellency, the President of India, on 30.08.2018. After satisfying itself, the Ministry of Home Affairs, Government of India, has selected the answering respondent and has placed him on probation in the Indian Police Service cadre vide a Notification



dated 26.12.2018. In this background, when the answering respondent has been extended future promotions, higher posts and the cadre of Indian Police Services, any such allegation or even punishment stood washed off inasmuch as neither the promotion orders nor his award of IPS cadre have been made subject to any proceedings by the appellants. It is, therefore, submitted that in view of the judgement in the case of **Pyare Mohan Lal Versus State of Jharkhand and others**, reported in **2010 (10) SCC 693**, which has also been relied on by the learned counsel for the appellants, and the earlier judgment of the Madhya Pradesh High Court in the case of **Lal Audhraj Singh Versus State**, reported in **AIR 1967 M P 284 (DB)** as later on also discussed by a learned Single Judge of the Allahabad High Court in the case of **Jayata Prasad Versus State of U.P. and another**, reported in **(1997) 3 UPLBEC 2198**, the respondent-petitioner cannot be awarded any punishment nor can the said punishment be adversely read against him.

7. Shri P. K. Verma, learned Additional Advocate General, on the other hand, in rejoinder has cited the judgment of a learned Single Judge of the Allahabad High Court in the case of **Chandrapal Versus State of U.P. and others**, Writ Petition No.24428 of 2007 decided on 3rd July, 2012 to contend that the



doctrine of washing off would apply only in cases of adverse entries and not of punishments awarded for misconduct which is also evident from the judgment in the case of **Pyare Mohan Lal** (supra). He, therefore, submits that the doctrine of washing off is nowhere attracted in a matter arising out of misconduct and as a matter of fact, the punishment awarded to the respondent-petitioner deserves to be restored.

8. Having considered the submissions raised and the judgements cited at the bar, the first issue with regard to the argument on behalf of the appellants in respect of reliance being placed by the learned Single Judge on file notings, suffice it to mention that the very same judgement in the case of **Shanti Sports Club and others** (supra) in paragraph 52 holds as under:-

“52. As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government **unless the same is sanctified and acted upon by** issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner provided in Articles 77(2) and 166(2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent



authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/authority in the Government.”

9. In view of the aforesaid ratio, what we find is that in the instant case, the manner in which the file travelled in spite of the notings of the Principal Secretary of the Department, the same resulted in the issuance of the second show cause notice culminating into the passing of the impugned order of punishment. Thus, the learned Single Judge has only noticed the said circumstance in order to assess the background in which the punishment came to be awarded. On the other hand, what we find is that the learned Single Judge has taken notice of the relevant facts pertaining to the respondent-petitioner not being arraigned as an accused in the criminal proceedings where a police report in his favour has been submitted and the same has been accepted by the Trial Court. This may not exactly amount to a declaration of innocence as observed by the learned Single judge, but it is a strong circumstance to infer that the respondent-petitioner was not involved in the incident which led to the death of a person in custody. The charge that the respondent-petitioner was not diligent in his duties was not found to be proved by the enquiry officer and



what we find strangely enough is that no oral enquiry was held to determine about the allegations of the whereabouts of the respondent-petitioner on the date of the incident. In the absence of any oral enquiry on that count, as is evident from the report of the enquiry officer, Shri P. K. Verma, the learned Additional Advocate General, could not satisfy us about the material or evidence being available to support the suspicion as indicated in the second show cause notice. Shri Verma could not point out from the record about any oral enquiry having been held. In our opinion, this also vitiates the enquiry proceedings and is sufficient to conclude that there was no material in the shape of any statement of any other person to demonstrate that the respondent-petitioner was negligent in his duties. Apart from this, there was no convincing documentary evidence to establish such negligence on the part of the respondent-petitioner and it is for this reason that the enquiry officer had clearly exonerated the respondent-petitioner. We, therefore, find ourselves in agreement with the conclusions drawn by the learned Single Judge and the arguments advanced on behalf of the appellants are untenable on that count.

10. Coming to the issue of doctrine of washing off, it is correct that the judgement in the case of **Pyare Mohan Lal** (supra), the law referred to is with regard to the character roll



entries only for which reference may be had to paragraphs 19 to 22 of the said judgement. It was also held therein that in a matter of compulsory retirement, the sting and the vigour of an adverse entry is not affected by the doctrine of washing off and such entries can be looked into at the time of compulsorily retiring a Government servant inasmuch as while doing so the entire service career has to be looked into. The doctrine of washing off is only relevant for the purpose of promotion and grant of benefits like crossing of efficiency bar.

11. However, the judgement in the case of **Lal Audhraj Singh** (supra), the Division Bench of the Madhya Pradesh High Court after appreciating the arguments of Shri G. P. Singh, (who was then a counsel in that case, later on Hon'ble Mr. Justice G. P. Singh, who has authored 'Law on Interpretations') held as under in paragraph 4:-

“4. In our judgment, the contentions advanced on behalf of the petitioner must be given effect to. It is well settled that a master cannot impose any punishment on a servant for a misconduct which he has condoned. The subject of condonation has been discussed at length in a number of English cases (see *Horton v. McMurtry*. (1860) 2 LT 297; *Phillips v. Foxall*, 1872-7 QB 666; *Boston Deep Sea Fishing & Ice Co. v. Ansell*. 1888-1889 Ch D 339 at p. 358, *Bettie v. Parmmenter* 1889-5 TLR 396; *Federal Supply etc. v. Angehrn and Piel*, 1910-80 LJPC 1, 8; *London General*



Omnibus Co. Ltd. v. Holloway 1912-2 KB 72; *Hanley v. Pease and Partners Ltd.*, 1915-1 KB 698 at p. 705. The principle that merges from these cases has long been adopted in India, see *L.W. Middleton v. H. Playfair*; AIR 1925 Cal 87 and *District Council, Amraoti v. Vithal Vinayak Bapat*, AIR 1941 Nag 125). In the Nagpur case, Bose, J. said—

“Once a master has condoned any misconduct which would have justified dismissal or a fine, he cannot, after such condonation, go back upon his election and claim a right to dismiss or to impose a fine or any other punishment in respect of the offence which has been condoned.”

Here, the negligence, which formed the basis of the notice issued to the petitioner on 27th January 1954 asking him to show cause why he should not be dismissed or given one of the lesser punishments detailed in rule (1) Para 3, of Part I Serial No. 13 of the Book Circular of the Madhya Pradesh Government, was clearly condoned by the Government when no action of any kind was, for over a period of nine years, taken against the petitioner on the charge of negligence and when, on the other hand, he was promoted in 1956 to the post of Assistant Conservator of Forests and also received after promotion annual increments and was allowed to cross the Efficiency Bar. **The promotion given to the applicant, the annual increments allowed to him as well as the crossing of the Efficiency Bar can only be explained on the basis that the negligence, for which the petitioner was charged in 1954 and which the Government thought serious enough to entail his dismissal, was condoned by the Government.**



It is not as if the Government was not aware of the fact that the applicant had been charged with negligence, and that a notice had been issued to him to show cause why he should not be dismissed from service. The notice dated the 27th January 1954 was issued to the applicant by a responsible officer, namely, the Divisional Forest Officer, Mandla Division. It is not also the case of the opponent that the petitioner was promoted to the post of Assistant Conservator of Forests in ignorance of the notice issued to him by the Divisional Forest Officer on 27th January 1954. **We are far from saying that once a person is promoted, then there is a condonation of the lapses or misconduct on his part prior to his promotion. But if the lapse or misconduct is one which is known to the authority before the person is promoted and not one which comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned.** In our opinion, having regard to the circumstances in which the petitioner was promoted to the post of Assistant Conservator of Forests and given annual increments and allowed to cross the Efficiency Bar, it must be held that the negligence, which formed the basis of the notice issued to the petitioner on 27th January 1954, was condoned by the Government. **The negligence having been condoned could not clearly be used subsequently for awarding any punishment to the petitioner.”**



12. The learned Single Judge of the Allahabad High Court in the case of **Jayata Prasad** (supra), while dealing with an issue of a similar nature in paragraph-8 of the judgement held as under:-

“..... **The effect of the punishment awarded to the petitioner consequent upon the departmental enquiry held in 1984-85 stood washed off when he had been promoted to the higher post in the year 1993.** To fortify this conclusion, a reference may be made to the decision of the Supreme Court reported in 1982 LABIC 1500 Dr. Girish Behari v. State of U.P. and Ors., in which it was held that the doctrine of washing off the adverse entries on promotion of an officer is a good doctrine which ensures justice to the public servants. **If an officer is selected and promoted to a higher post despite adverse entries against him, those adverse entries lost all value** and it is not open to the authorities to consider those adverse entries against the officer again at the time of subsequent promotion. After the adverse entries cease to be effective they cannot constitute valid material and even if the entire record of the officer is taken into account those entries cannot be used against the officer concerned for purpose of denying him future promotion.”

13. We may, however, point out that the learned Single Judge in that case has referred to a punishment awarded in a



departmental enquiry, but has relied on the decision which is in relation to the consideration of adverse entries.

14. On the aforesaid count, we find that the State of Bihar itself has proceeded to promote the respondent-petitioner to the rank of the Superintendent of Police, who has ultimately been now included after being selected in the Indian Police Service cadre by the Ministry of Home Affairs.

15. In the background aforesaid, the issue of an established misconduct may be relevant for consideration at the time of applying the doctrine of washing off, but in the present case, we have already found hereinabove that the award of punishment itself suffered from infirmities that has been rightly quashed by the learned Single Judge. It is, therefore, not necessary to further delve into the issue as we find ourselves in full agreement with the judgement of the learned Single Judge in the light of what has been reasoned out by us. The impugned judgement, therefore, does not require any interference on the merits of the writ petition.

16. Coming to the imposition of costs, it cannot be said conclusively that the respondent-petitioner had been subjected to any harassment. If the disciplinary/appointing authority was of the opinion that there was a reason to differ with the enquiry report,



the issuance of a second show cause notice is an exercise of power which by itself cannot be treated to be *mala fide* unless it can be shown that it was completely tailored for the purpose of motivated harassment. It is quite possible that there was a doubt in the mind of the disciplinary authority about the conclusions drawn by the enquiry officer which can be an error of judgement as well. In this view of the matter, we find it expedient and just on the facts of the present case to partly allow the appeal to the extent of imposition of costs.

17. Consequently, the imposition of Rs.50,000/- as costs on the State under the impugned judgement dated 22.08.2017 passed in Civil Writ Jurisdiction Case No.8415 of 2017 is set aside.

18. The appeal is partly allowed, but the judgement on merits of the learned Single Judge is affirmed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

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