

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1398 of 2018

In
Civil Writ Jurisdiction Case No.14753 of 2017

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Dwarika Paul, son of Shri Ramdhari Paul, resident of village-Tarawon, P.S.
Belwan, district – Kaimur (Bhabhua)

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Home (police) Department, Main Secretariat, Patna
2. Special Secretary, Home (police) Department, Main Secretariat, Patna.
3. Deputy Secretary, Home (police) Department, Main Secretariat, Patna.
4. Director General of Police, Bihar, Home (police) Department, Main Secretariat, Patna.
5. Inspector General of Police (Head Quarter) Home (police) Department, Main Secretariat, Patna.
6. Superintendent of Police, Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 14-03-2019

The appellant by filing the present Appeal under



Clause 10 of the Letters Patent of the Patna High Court Rules seeks to set aside the order dated 24.08.2018 passed by a Single Bench of this Court in CWJC No. 14753 of 2017, by which the learned Single Judge has dismissed the writ application by which a challenge had been placed to the order of punishment awarded to the writ petitioner in a departmental proceeding initiated against him.

2. The appellant-writ petitioner while posted as Deputy S.P. at Sub-Divisional Office Belsand, Sitamarhi was called upon to take charge of investigation of one Dumra P.S. Case No. 16 of 2014 instituted against six persons as accused for offence under Sections 420, 467, 468 and 471 of the Indian Penal Code and Section 65 of the I.T. Act as well as the Prevention of Corruption Act.

3. It so happened that on 03.08.2014, the aforesaid case, which fell under the jurisdiction of Dumra Police Station of Sitamarhi Sadar was assigned to the petitioner for further investigation and supervision by the S.P. Sitamarhi.

4. The appellant-writ petitioner expressed his inability to take up further investigation of the case which was reported by the S.P., Sitamarhi to the I.G. Sitamarhi range, who recommended for initiation of a departmental proceedings



against the petitioner for his alleged act of disobedience for complying the departmental orders.

5. That on 27.05.2015 a memorandum was issued under the signature of the Special Secretary of Home (Police) Department intimating the appellant-writ petitioner about initiation of departmental proceedings and a charge memo dated 11.06.2015 was forwarded in Form- K containing for distinct charges.

6. On 17.12.2015 the appellant-writ petitioner submitted his written explanation/defence before the Enquiry Officer reiterating in detail the reasons for not taking up the further investigation and also expressing his inability to continue with the further investigation and supervision of the case. However, the respondent-Superintendent of Police did not at any point of time direct him to rectify the errors so that there would be no violation of Rule 773 of the Police Manual, 1978.

7. It is needful to mention here that even before the memo of charges was served on him, the Director General of Police, taking cognizance of one letter of the respondent Superintendent of Police, Sitamarhi dated 14.10.2014 asked for a written explanation from the petitioner relating to the charges as contained in Form-K. The appellant-writ petitioner submitted



his preliminary explanation in reply to the aforementioned letter vide his letter dated 02.12.2014 stating therein that the charge of refusal to take up further investigation of Dumra Police Station Case No. 16 of 2014 was not entirely correct inasmuch as in compliance of the order of the Superintendent of Police, Sitamarhi, the appellant-writ petitioner had taken charge of the relevant records of the said case which included the latest developments/progress of the investigation and thus, the charges as made out by the Superintendent of Police, Sitamarhi appeared to be exaggerated and against the true picture. He further stated that during the course of such scrutiny of relevant records, the appellant-writ petitioner had noted certain discrepancies regarding the entries relating to up-to-date investigation of the case such as release of majority of accused who have been released on bail. Consequently, the appellant-writ petitioner had requested the superintendent of Police, Sitamarhi to take necessary steps for getting such discrepancies rectified by the earlier Investigating Officer and the Dy. S.P. Sadar in accordance with the relevant rules of police manual and unless such discrepancies were addressed, it would be difficult for him to proceed with the supervision of the case.

8. So far as the charge of unauthorized absence



is concerned, the appellant-writ petitioner submitted that he had proceed on one day leave on 14.10.2014 after swearing an affidavit before the Hon'ble Patna High Court but his leave was cancelled by the Superintendent of Police, Sitamarhi and as soon as he came to know, he immediately returned without availing the aforesaid leave sought by him.

9. Learned counsel for the appellant-writ petitioner further informed the Court that the preliminary explanation offered by the appellant writ petitioner did not find favour with the Director General of Police and accordingly, the same was rejected and charge memo was issued vide Annexure-P-2 and 2/A. The charge memo Annexure-P-2 and 2/A were answered in the same terms by the appellant-writ petitioner (Annexure-P/3) which was considered and an enquiry report dated 01.01.2017 was submitted in which the Enquiry Officer found only one out of four charges were proved against the petitioner. Accordingly, on 19.01.2017 a second show cause was issued to the petitioner accompanied by a copy of enquiry report.

10. On 08.02.2017, the petitioner submitted his reply to the second show cause. In the said reply, the appellant-writ petitioner submitted that so far as charge no. 2, holding him



guilty of charge of disobedience is concerned, the appellant-writ petitioner clarified that it was only after taking over charge of the records that the writ petitioner could discern that there were discrepancies in the investigation and, therefore, the petitioner had in fact complied with the order of respondent-Superintendent of police and taken over charge of the records of the case. Such a fact was apparently ignored by the Enquiry Officer before finding him guilty of the charge of disobedience.

11. The charge of unauthorized absence as against the petitioner could not be sustained by the Enquiry Officer. However, despite such glaring anomalies in the contents of the charge, the Disciplinary Authority without application of mind, mechanically and in a routine manner proceeded to award of punishment to the petitioner by which two annual increments of the petitioner have been withheld with cumulative effect and the future promotion to the petitioner for two years has also been withheld.

12. Challenging the aforesaid order of punishment, the appellant-writ petitioner approached this Court under Article 226 of the Constitution of India seeking issuance of writ of *certiorari* for quashing the memo no. 6335 dated 03.08.2017 issued by the Deputy Secretary. The following major



punishments were sought to be quashed.

1. Withholding of two annual increments with cumulative effect.

2. Withholding of promotion for two years (Annexure P/1).

13. A further direction was also sought for by the appellant–writ petitioner for grant of all the benefits of service available to the petitioner as a result of setting aside the impugned order.

14. Learned Counsel Shri K.K. Thakur appearing on behalf of the appellant has submitted that in terms of Rule 773 of the Bihar Police Manual, 1978 the earlier Investigating and Supervising officer were enjoined with the duty to make the necessary rectification in the investigation while taking over charge from the predecessor Investigating Officer. Furthermore, there was no material available before the Enquiry Officer to suggest that the respondent- Superintendent of Police, Sitamarhi, had at any point of time called upon the petitioner to rectify the mistake in the case diary.

Rule 773 (a) & (b) of the aforesaid Manual is quoted herinunder:-

“Rule 773. Taking over charge by subordinate officers – (a) All officers of and



above the rank of Assistant Sub Inspector, when joining a post from leave or leaving a post to proceed on leave or when joining or leaving a post on transfer, etc., or when making or taking over charge of any sub divisional court or other post shall furnish the Superintendent, through the usual channel, with a certificate in P.M. Form no. 3 stating the date and hour of making or taking over charge, the articles taken over, the details of cash in hand and any faults and omissions in the registers and files taken over. The relieved officer shall also give a memo of important items to be attended to the relieving officer. A separate list of confidential files should be prepared and signed by both the officers and sent with the charge report to Superintendent only.

(b) The relieving officer should take over charge carefully as he shall be called upon to make good any deficiency discovered after his taking over charge.”

15. Thus, having not been called upon under Rule 773 (b) of the Bihar Police Manual, 1978, to rectify such discrepancies the respondent – Superintendent of Police, Sitamarhi should not have held the petitioner guilty of the charge of disobedience.

16. Learned counsel for the appellant-writ petitioner has further urged that the order impugned in the writ application was passed by the Secretary in the Home Department, who was legally bound to consider the points



raised by the writ petitioner in his written statement of defence but without considering the points raised by him in his second show cause, the respondent-Deputy Secretary could not have held the petitioner guilty. It is thus, submitted by learned counsel that the order impugned suffers from mis-appreciation of both facts and law and has been passed in an altogether mechanical manner without application of mind. Learned counsel for the appellant Shri Thakur has further urged that the Enquiry Officer, also being in the capacity of Quasi Judicial Officer, while conducting the departmental proceeding against the appellant- writ petitioner was expected to test the veracity of the charges framed against him in the light of the assertion made by the appellant-petitioner in his show cause. The statement of the appellant writ-petitioner that he immediately took charge of Dumara P.S. Case No. 16 of 2014 and it was only after going through the records collected by his predecessor I.O. and Dy. S.P. that he could ascertain and identify the serious defects in the investigation has been given a total go-bye. The said defects was never ordered by the S.P. to be corrected by the petitioner himself. Such an averment made by the petitioner in his show cause was never controverted by the Presenting Officer or by the Superintendent of Police and therefore, there was no



material available before the Enquiry Officer to arrive at a finding against the petitioner.

17. So far as the charge of unauthorized absence is concerned, the same could not be proved. It was also alleged that the order impugned has been passed on the basis of no material and both the Enquiry Officer and the Disciplinary Authority failed to notice the same. It was thus, submitted that the impugned order was duly harsh and disproportionate to the charge as against the appellant-writ petitioner and withholding of two annual increments with cumulative effect as also debarring the petitioner from any future promotion was against the settled principles of law and as such, warranted interference by this Court so as to necessitate the issuance of *certiorari* for quashing the impugned order of punishment dated 03.10.2017.

18. The learned Single Judge after hearing the writ application failed to appreciate that the impugned order of punishment against the petitioner was not based on correct premises as the learned Single Judge had proceeded to assume that the petitioner had admitted his guilt which was not so. The learned Single Judge has further observed that the Enquiry Officer while conducting the enquiry had given an ample opportunity to the petitioner to defend himself in the enquiry



proceedings and it was only thereafter submission of the enquiry report by the conducting officer that a second show cause was issued to the petitioner before awarding the aforesaid order of punishment.

19. Learned counsel for the appellant-writ petitioner further submitted that the learned Single Judge has also failed to consider the true import of Rule 773 of the Bihar Police Manual, 1978 and his conclusion that the aforesaid Rule does not apply in connection with the particular case is erroneous.

20. We have heard learned counsel for the parties. The main crux of the argument as raised by the appellant-writ petitioner is that the learned Single Judge failed to take note of the anomaly pointed out by the petitioner in reply to the show cause notice which was issued to him and also the Form-K served upon him for calling upon him to answer the charges of disobedience of duties and orders passed by the Superintendent of Police, Sitamarhi. It has been urged that the provisions of Rule 773 of the Bihar Police Manual, 1978 which have been clearly violated and which was repeatedly pointed out by the appellant was given a total go-bye in the decision of both the authorities, namely, the Enquiry Officer and the Disciplinary



Authority. The said proposition of law also failed to find appreciation by the learned Single Judge and non consideration of this aspect of the matter has caused serious prejudice to the appellant inasmuch as he has been inflicted a dual punishment of withholding of two increments with cumulative effect and debarring him from further promotion. It was asserted that though three of the four charges had not been proved against the petitioner, the fourth charge also did not stand substantiated.

21. Having considered the entire facts, we find that three charges which were against the petitioner were dropped and the only charge which continued was the charge of disobedience of orders of the Superintendent of Police, Sitamarhi. The State, being the Disciplinary Authority, after considering the enquiry report submitted to the Joint Secretary, Home (Police) Department had passed the impugned order and it is only after considering all aspects of the matter that the Disciplinary Authority issued the impugned order of punishment. The specific allegation of the petitioner is that neither of the authorities have considered the show cause filed by the petitioner. The defence of the petitioner and the violation of Rule 773(b) of the Bihar Police Manual cannot be said to be established in the sense that there has been misapplication of



violation of Rule 773 of the Bihar Police Manual, 1978 by the petitioner and thus, no prejudice can be said to have been occasioned to the petitioner in the order passed by the authorities.

22. The Enquiry Officer after consideration of all aspects has come to the conclusion that even if there was any discrepancy in the investigation by the previous Investigating Officer, who had superannuated, during the midst of the investigation such discrepancy could not be rectified by him, rather the same could have been addressed to, only by the present delinquent officer who had been directed to conduct investigation in the aforementioned case. The same could be done only after he would have assumed charge but he did not do so. There appears to be no reason why the petitioner did not comply with the orders of the Superintendent of Police, Sitamarhi but instead chose to fall back on Rule 773 of the Bihar Police Manual, 1978 to camouflage his own inefficiency as by no stretch of imagination could a retired/superannuated investigating officer be called upon to fill in lacuna on an investigation which was no longer in his hands on account of his having remitted office. Thus, in our considered opinion, such a plea raised by the writ petitioner is wholly irrelevant and cannot



be used in his defence, as he has apparently failed to comply with the order issued by the Superintendent of Police, Sitamarhi for taking upon investigation and going further with the same. His activities are plainly demonstrative of recalcitrant bent of mind which is not conducive to any disciplined force and warrants appropriate action under the relevant rules.

23. So far as other three charges are concerned, we do not wish to dwell into them as the Enquiry Officer had apparently exonerated the appellant-petitioner of the said charges. The only charge found proved is that of disobedience of orders of Superior Authority, which has necessitated the appropriate authority, the State Government to issue orders of punishment withholding two annual increments with cumulative effect as also debarring the petitioner from any future promotions.

24. However, so far as the contention of learned counsel for the Appellant is that the Court may consider the case of the Appellant as the order of punishment is unduly harsh as compared to the nature of charge found to have been substantiated, we find that the same is worthy of consideration.

25. Thus, though in principle, we do find an anomaly in the order passed by the learned Single Judge or the



decision impugned and dismiss the appeal. However, it would be appropriate and in the interest of justice to remit this matter to the authorities to the extent as to enable the appellant–writ petitioner to prefer an Appeal against the order of punishment passed against him with regard to proportionality of punishment.

26. Accordingly, we modify the impugned judgement of the learned Single Judge that the proportionality of the punishment deserves to be looked into keeping in view the nature of the charges by the disciplinary authority that has passed the order of punishment.

27. With the aforesaid modification, we remit the matter to the disciplinary authority to proceed to consider and pass an appropriate order on the proportionality of the order only and to that extent the Appeal is partly allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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