

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8702 of 2018

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Jai Krishna Rai Constable No. 488 Literate S/o Late Sukhlal Rai Resident of
Village - Chirand, P.S. - Doriganj, District - Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, New Secretariat, Patna.
3. The Additional Director General HQ, New Secretariat, Patna.
4. The Additional Director General BMP, Patna.
5. The Commandant, BMP - 14, Veterinary College Campus, Patna.
6. The Dy. S.P.-cum-Conducting Officer, BMP - 14, Veterinary College Campus, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ritesh Kumar, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AG-3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 24-11-2021

Heard learned counsels for the respective parties.

In the instant petition, petitioner has prayed for following
reliefs:

“(i) For setting aside Memo No. 3355 dated 30.12.2017 issued under the signature of the Dy. S.P.-cum-Conducting Officer, Bihar Military Police-14 (hereinafter referred to as BMP-14), Patna whereby and whereunder an order has been passed to re-conduct the departmental proceeding afresh and the petitioner has been directed to file show cause against the charges mentioned in the Departmental Proceeding.

(ii) For quashing Memo No.-180/3395/14/L-1 dated 27.11.20217 issued under the signature of the D.G.P., Bihar, Patna



whereby and whereunder while setting aside the order passed in the departmental proceeding vide No.-19/03 issued vide Memo No.-2701 dated 10.11.2010, has directed for conducting the departmental proceeding afresh.

(iii) For a direction upon the respondent authorities to consider the case of the petitioner for his promotion to the post of Sub-Inspector (Arms) since the juniors to the petitioner have already been granted the benefits of promotion long back.

(iv) For any other relief/reliefs for which the petitioner may be found entitled to.”

Petitioner was subjected to parallel proceedings in a disciplinary proceedings, he was punished on 10.11.2010 in imposing the penalty of withholding of one increment with cumulative effect and suspension has been treated as half earned leave. In the penalty order itself, an observation has been made by disciplinary authority that in the event of petitioner acquittal in the criminal case, the penalty order would be modified. The petitioner was acquitted in the criminal proceeding on 07.06.2017.

Pursuant to the acquittal order dated 07.06.2017, the Director General of Police invoked Rule 853 A of Bihar Police Manual and suo muto reviewed the order of penalty dated 10.11.2010 while setting aside the order of penalty and ordered for fresh departmental enquiry on 23.11.2017. which is the subject matter of the present petition.



Learned counsel for the petitioner submitted that petitioner had not preferred appeal against the order of penalty dated 10.11.2010 and he was awaiting for his acquittal in criminal proceeding. The Director General of Police while invoking Rule 853 (A) review the penalty order Suo Moto and ordered for fresh enquiry. Invoking Rule 853 A to the extent that it is not within a reasonable time from the date of final order. D.G. is empowered to review the penalty Suo Moto. In the present case, there is a delay of nearly 7 years. The petitioner has cited the decision of this court passed in CWJC No. 13328 of 2014 dated 20.06.2016. On the other hand, learned counsel for the respondents state has submitted that Director General of Police is empowered to invoke Rule 853 A of the police manual to review the final order and interfere with the final order. The Director General of Police has taken note of acquittal order dated 07.06.2017 in the result, he has passed the order on 23.11.2017.

Heard the learned counsel for the respective parties.

Undisputed facts said that the petitioner was subjected to disciplinary proceeding. In a disciplinary proceeding, he was punished on 10.11.2010 by withholding of one increment with cumulative effect with a rider that in the event of acquittal of



the petitioner, the order of penalty 10.11.2010 would be modified. The petitioner has not preferred appeal as he has accepted the order dated 10.11.2010. On acquittal call in the criminal case, Madhubani, P.S. case no.74/2003, he has submitted representation on 21.12.2012 to modify the penalty order dated 10.11.2010. In the meanwhile, Director General of Police, pursuant to the acquittal order proceed to set aside the penalty order dated 10.11.2010 and order for fresh enquiry. With reference to rule 853(A). Rule 853(A) reads as under:

“853A. Inspector-General may call for the file in any case even when no appeal lies and pass such order as he may deem fit. The Deputy Inspector-General may call for any file but he should refer it to the Inspector-General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding.

(b) Notwithstanding anything contained in these rules the State Government may call for the proceedings in any disciplinary case even when no appeal or memorial lies, and pass such order as it may deem fit.

(c) When an appeal has been filed and the Inspector-General on applying his mind thinks that he should enhance the punishment, he can dismiss the appeal but must simultaneously mention in that order that as per powers given in the rule 853A (a), he has decided to review it for enhancement and take action for obtaining a show cause, etc.. where necessary.”



Perusal of the aforesaid provision, it is crystal clear that Director General of Police is empowered to review or interfere with the final order within a reasonable time from the date of the final order in a disciplinary proceeding. In the present case, date of final order is dated 10.11.2010 whereas D.G.P. order dated 23.11.2017. Thus, the Director General of Police has taken seven years to interfere with the penalty order dated 10.11.2010 which is highly arbitrary. In the light of these facts and circumstances, Director General of Police decision dated 23.11.2017 is not in consonance with the words under the Rule 853(A) of Bihar Police Manual, that Review shall be ordered within a reasonable period. Reasonable period is to be understood within 90 days. Similar view was expressed by this Court vide *Surendra Kumar (supra)*.

Accordingly, impugned order dated 30.12.2017 is set aside, disciplinary authority is hereby directed to take note of acquittal order dated 07.06.2017 and proceed to modify the order of penalty dated 10.11.2010, within a period of three months from the date of receipt of this order. Thereafter, petitioner shall be extended monetary and service benefits which is due to him within the aforesaid time limit.



With the above observation, petition stands
disposed of.

(P. B. Bajanthri, J)

Gaurav Kumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

