

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12210 of 2019

Shivnath Turi @ Shiv Nath Turi @ Constable 08 Shiv Nath Turi son of Late Mahalal Turi then posted at Rail District Jamalpur under control of superintendent of Rail Police Jamalpur permanent resident of village- Kanhaiyaganj Police Station- Aungari, Post Office- Ekangar Sarai, District- Nalanda, at present- Mohallah- Kachiyana, Ward No. 10, Post Office- Islampur, Police Station- Islampur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna, Bihar.
2. The Additional Chief Secretary, Department of Home, Government of Bihar Old Secretariat, Patna, Bihar.
3. The Principal Secretary, Department of Home, Government of Bihar Old Secretariat, Patna, Bihar.
4. The Director General of Police Old Secretariat, Patna, Bihar.
5. The Inspector General of Police (Administration) Police Head Quarters, Old Secretariat, Patna, Bihar.
6. The Additional Director General of Police, (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar.
7. The Inspector General of Police (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar.
8. The Deputy Inspector General of Police (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar.
9. The Superintendent of Rail Police Jamalpur, Rail District Jamalpur, Bihar.
10. The Deputy Superintendent of Rail Police, Jamalpur, Rail District Jamalpur, Bihar.
11. The Deputy Superintendent of Rail Police, Kiul, Rail District, Jamalpur, Bihar.
12. The Inspector Police cum Station House Officer Rail Police Station Kiul, Rail District Jamalpur, Bihar.
13. Mr. Kameshwar Singh Inspector of Police cum In-Charge Sergeant Major cum Conducting Officer of Rail District Departmental Proceeding No. 04 of 2017.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Y.V.Giri, Sr. Advocate
For the Respondent/s : Mr.Md. Nadim Seraj (Gp5)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER



3 06-04-2021 Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner and Md. Nadim Seraj, for the State.

The petitioner is aggrieved by the order inflicting punishment of dismissal from service, approval of the same by the appellate authority and dismissal of the memorial of the petitioner by the DGP.

Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner has made manifold submissions. He submitted that the basic charge against the petitioner cannot be proved in the absence of examination of Shambhu Thathera, on whose confession criminal proceeding has been initiated against this petitioner and others.

Mr. Nadim Seraj, learned Government Pleader No. 5 would submit that in the enquiry reasonable opportunity was provided by the respondents to the petitioner and thereafter in the full-fledged departmental proceeding the petitioner was found guilty on scrutiny of the materials and charge and he was inflicted punishment of dismissal by the disciplinary authority which has been affirmed by the appellate authority and the memorial filed by the petitioner against the dismissal order and the appellate order has also been dismissed and as such there is



no infirmity in the decision making process.

Mr. Giri, learned senior counsel appearing on behalf of the petitioner would submit that looking at the memo of charge one can understand that the foundation of the departmental proceeding is the so called confessional statement of Shambhu Thathera but unfortunately Shambhu Thathera was not examined in the departmental proceeding against the petitioner. However, he admits that for the lapse of the escort party in Jansatabdi Express as well as their associate police personal involved in the alleged activities in assisting the liquor traders in transportation. The Enquiry Officer submitted enquiry report holding this petitioner guilty of the charges and the disciplinary authority thereafter decided to inflict punishment of dismissal from service having regard to the fact that in the transportation of illegal liquor police personnel were found indulged in helping liquor traders in transportation of illegal liquor. In appeal preferred by the petitioner and others the appellate authority has taken a different view. In the case of Dhanesh Kumar, vide Annexure-10, who has been inflicted stoppage of one increment equivalent to two black marks in appeal whereas different view has been taken by the appellate authority in the matter of inflicting punishment to the petitioner.



Mr. Giri, with reference to Annexure-10 submits that when the charge were identical and materials were identical, the enquiry officer has also found the case of the petitioner and said Dhanesh Kumar on similar footing, the appellate order adopting pick and choose in the matter of awarding punishment is illegal and arbitrary and discriminatory.

With reference to service record of the petitioner, Mr. Giri submits that the petitioner has unblemished service record of 19 long years and as such while inflicting punishment the respondents were required to take into consideration the unblemished service record of 19 long years which has been ignored by the disciplinary authority, appellate authority and at the time of rejecting the memorial on 24.12.2019.

The Court finds substance in the submission of Mr. Giri that in the process of inflicting punishment unblemished career of service has relevance and the respondents were under obligation to take into consideration the same before taking decision to inflict punishment of dismissal.

Considering the fact that similar circumstanced other person, namely, Dhanesh Kumar has been inflicted punishment of stoppage of one increment equivalent to 2 black marks whereas unblemished service record of the petitioner was totally



ignored and the petitioner has been inflicted punishment of dismissal which has been affirmed by the appellate authority and even the memorial was also rejected by the Director General of Police, the Court is constrained to allow the writ petition. The order of dismissal passed by the disciplinary authority as contained in Annexure-7, the appellate order dated 31.12.2018 as contained in Annexure-9 and the order rejecting memorial as contained in Annexure—11 which is part of I.A. No. 1/2021 are quashed. The matter is remanded back to the disciplinary authority to consider afresh the issue of quantum of punishment to the petitioner keeping in view the fact that (a) the petitioner has unblemished service career of 19 years, and (b) identically circumstanced other police personnel for the same charge inflicted punishment of stoppage of 1 increment equivalent to 2 black marks. Necessary decision afresh in this regard must be taken by the disciplinary authority within a period of sixty days from the date of receipt/production of a copy of this order. As a result of quashing of Annexures 7, 9 and 11, the petitioner shall be reinstated in service. However, the payment of back wages will depend upon fresh decision taken by the disciplinary authority in terms of the direction issued by this Court in the present order.



With the aforesaid, the writ petition stands allowed
and disposed of.

(Anil Kumar Upadhyay, J)

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