

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 84 of 2018

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Bhim Hembram @ Bheem Hembram Son of Late Dhodhu Hembram,
Resident of Village-Gorgawan, Police Station Korha in the District of Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Home Department,
Government of Bihar, Patna
2. The Inspector General of Prisons and Correctional Services, Bihar, Patna.
3. The Superintendent, Sub Jail, Sherghati.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Rajendra Narayan, Sr Advocate with Mr Braj Nandan Kumar Tiwary, Advocate
For the Respondent/s	:	Mr Shashank Kumar Sinha, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 29-07-2022

Heard learned counsel for the petitioner and the respondents.

2 The petitioner seeks quashing of the order dated 24.04.2017 bearing Memo No 1999 whereby and whereunder the Inspector General of Prisons and Correctional Services, Bihar, Patna (for brevity, *IG (Prisons)*) has inflicted the punishment of stoppage of two annual increments with cumulative effect. Petitioner has also prayed for quashing of order dated 13.09.2017 bearing Memo No 5215 whereby the appellate authority has rejected the petitioner's appeal against the order of punishment.



3 The petitioner was posted as Assistant Jailer at Sub Jail, Sherghati in the district of Gaya at the relevant time. At mid-night in between 29th and 30th July 2005, three prisoners escaped from the sub jail. The authorities proceeded against the warden/s, namely, Nand Kumar Singh, America Ram and Vishnu Rajwar. The senior warden Prem Kumar Dubey and Raj Kishore Prasad were also proceeded against. All but Vishnu Rajwar, the erstwhile warden, were punished by the Superintendent, Central Jail, Gaya.

4 The IG (Prisons) disagreed with the findings of the Superintendent, Central Jail, Gaya and issue show cause to all the wardens and senior wardens as to why major punishment be not awarded. On consideration of the reply, the Department decided, by communication dated 28.12.2007 bearing Memo No 7762 to proceed in the matter afresh. The petitioner, who was the Assistant Jailer of Sub Jail, Sherghaty at the relevant time, was also proceeded against. Conducting Officer and Presenting Officer were appointed under order dated 03.02.2016 bearing Memo No 708 was issued by the IG (Prisons), Bihar, Patna. This order was also served on the petitioner along with charges on Prapatra *Ka*. The charges in substance were alleging negligence and dereliction of duty leading to a situation where the three prisoners had



escaped. There was also allegation that illegal gratification was received from these prisoners for facilitating their escape.

5 In the enquiry, the petitioner took a stand that since the role of the wardens and senior wardens were found suspicious, the District Magistrate and Superintendent of Police, Gaya had directed the petitioner to lodge First Information Report (for brevity, *FIR*) in the local police station. The petitioner had, thus, lodged an *FIR* and discharged his duties. The petitioner had got the prisoners back in the lock up in the evening and gone to his residence. Thereafter, the responsibility of their security was of the warden/s. He has taken a plea that it is not possible for an Assistant Jailer to be vigilant while he is asleep. The vigilance was to be maintained by the deputed warden/s for which the petitioner could not be held liable. He has, thus, objected to the framing of charges against him.

6 Learned senior counsel, based on the petitioner's stand taken in the proceedings, has submitted that the alleged negligence did not constitute a misconduct and, therefore, the petitioner could not have been proceeded against, let alone punished. The charge, regarding acceptance of illegal gratification to facilitate escape of three prisoners, was, admittedly, not found proved against the petitioner. The other charge that the petitioner was negligent



towards his duties, however, was held to be proved. The petitioner, therefore, has been awarded the punishment of withholding of two annual increments with cumulative effect, which has been assailed in the instant proceedings.

7 The petitioner has alleged that the charge of negligence and dereliction of his duties was also required to be proved with reference to some material or witness, as per procedure prescribed under Rule 17 (14) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, which has not been done.

8 The State, on the other hand, has taken a stand that being Assistant Jailer, the petitioner cannot absolve himself of his responsibility for maintaining safety and security of the Sub Jail, Sherghaty. One of the escaped prisoner, namely, Zaki Ahmed, who was later arrested by the police, had made a confessional statement that all the three prisoners had escaped with the help of the instant petitioner after giving him bribe. The responsibility towards the sub jail is inherent in the petitioner by virtue of the fact that he was Assistant Jailer, incharge of the sub jail in question. This is not a fact which is required to be established.

9 In so far as the charge of illegal gratification, the authorities have been fair and have not held the charges to be



proved for reasons which are manifest from the order passed by the IG (Prisons) whereby the punishment has been inflicted. The Principal Secretary has also considered the petitioner's appeal by a reasoned and speaking order. Since the charge of illegal gratification could not be established and since the petitioner, by virtue of his office, was responsible for the safety and security of the sub jail in question, the lowest of the major penalties, withholding of two annual increments with cumulative effect, has been awarded.

10 Having considered the rival submissions, this Court finds favour with submissions advanced on behalf of the petitioner. The admitted position is that the charge regarding acceptance of illegal gratification by the petitioner for facilitating escape of the prisoners was not held to be proved in the enquiry. It is also settled by now that negligence and dereliction, if alleged as a charge, shall be required to be proved in the departmental proceedings on the standard of preponderance of probability with reference to some materials or witness. In the instant case, the charge of negligence and dereliction have been held proved merely based on confessional statement of one of the escaped prisoner, namely, Zaki Ahmad. The confessional statement recorded in the course of criminal investigation, per se, could not have been made



the basis of holding the charge proved. The law in this regard is well settled by decision of the Apex Court in the case of *Roop Singh Negi -Versus- Punjab National Bank & Others*, since reported in (2009) 2 Supreme Court Cases 570.

11 This Court, therefore, does not find any basis for holding the charge of negligence and dereliction of duties to be proved in accordance with law. The punishment of stoppage of two annual increments under order dated 24.04.2017 bearing Memo No 1999 issued by Respondent No 2 is, thus, unsustainable and hereby quashed. The appellate order dated 13.09.2017 affirming the illegal order is also quashed.

12 The petitioner, as a result, is entitled to his benefits as a consequence of quashing of impugned orders.

13 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.09.2022
Transmission Date	NA

