

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.986 of 2023

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Arun Kumar Dubey Son of Late Kaushal Kishor Dubey, resident of Flat No. 304, Sonal Raj Complex, Nehru Nagar Main Road, Near Forest Office, Post Office Patliputra, Police Station Patliputra, District and Town- Patna, PIN- 800013, Bihar.

... .. Petitioner

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Home Department (Police Wing), Government of Bihar, Patna.
2. The Additional Chief Secretary, Home Department (Police Wing), Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. Deputy Secretary of the Home Department (Police Wing), Government of Bihar, Patna.
5. The Bihar Public Service Commission, through its Secretary Address- 15, Jawahar Lal Negru Marg (Bailey Road), Patna- 800001

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Malni, Senior Advocate Mr. Kumar Ravish, Advocate Mr. Sanket, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP-4
For the BPSC	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 24-04-2023 Heard learned Senior counsel for the petitioner and

learned counsel for the State as also learned counsel for the Bihar

Public Service Commission.

2. This writ application has been filed seeking the
following reliefs:-

“i. To quash and set aside Annexure-
P/15 i.e. the Government Order of
penalty/punishment dated 1 April,
2022 (Memo No. 3369) issued under
the signature of the Deputy Secretary
of the Home Department (Police
Wing), Government of Bihar, Patna



whereby and whereunder penalty of deduction of 10% pension of this petitioner for a period of five years was imposed under Rule 43 (b) of the Bihar Pension Rules.

ii. To quash and set aside Annexure-P/18 i.e. the order dated 14 September, 2022 (Memo No. of 9335) passed in the Review Application of the petitioner issued under the signature of the Deputy Secretary, Home Department (Police Wing), Government of Bihar, Patna whereby and whereunder the Review Application filed by the petitioner was rejected.

iii. To direct for payment of the deducted 10% monthly pension with interest forthwith.

iv. To hold and declare that the petitioner has not committed any grave misconduct or caused any pecuniary losses to the State Government due to his negligence and thus the entire proceeding under Rule 43(b) of the Bihar Pension Rules is vitiated in the eyes of law including the punishment imposed upon him.

v. To direct for refund of the deducted amount of pension with compound interest.

vi. To direct for payment of exemplary cost of this litigation.

vii. Any other relief or reliefs which the petitioner may found entitled in the facts and circumstances of the case.”



Brief Facts of the case

3. The petitioner joined as Sub-Inspector of Police in the Police Department of the Government of Bihar in the year 1990. He was promoted to the post of Deputy Superintendent of Police and ultimately retired from service on 31.07.2021.

4. It is stated that vide Memo No. 2226 dated 8th August 2019, Inspector General of Police (Headquarters) Bihar, Patna forwarded a copy of Memo No. 6258 dated 2nd August, 2019 of the Home Department (Police Wing), Bihar through the commandant Bihar Military Police-14 by which the petitioner was served with a memo of charge. The memo of charge is Annexure '1' to the writ application. The second part of Annexure '1' contains the imputations and summary of allegations. As the petitioner did not submit his explanation to the show cause notice issued by the Superintendent of Police, Samastipur vide Memo No. 4659 dated 22.06.2019, a charge has also been framed in part III of the memo of charge showing that not filing of the explanation despite order is a disobedience to the direction of the Senior Police Officers and the Police Headquarter which indicates indiscipline in the workings of the petitioner.

Submissions on behalf of the Petitioner

5. Learned Senior counsel for the petitioner submits that the genesis of the whole case lies in letter/communication of the



Superintendent of Police, Samastipur as contained in Letter No. 4110 dated 03.06.2019 which is one of the documents enclosed with the memo of charge. A perusal of the same would show that the Superintendent of Police reviewed the performance of the Sub-Divisional Police Officers in the District of Samastipur and as regards the petitioner, it is stated that the petitioner joined on the post of Sub-Divisional Police Officer, Rosera, Samastipur on 21.02.2019. On the date of his joining, the number of specially reported cases were 272 and not-specially reported cases were 236. As on 01.06.2019, the cases pending for investigation were 526 out of which specially reported cases were 289 and not-specially reported cases were 237. Similarly, on the date of joining of the petitioner altogether 28 cases were pending for supervision. It is submitted that as per the memo of charge, the total number of specially reported cases increased from 272 to 289 within a period of three months but charge no. 1 states that in his area 28 specially reported cases are registered every month, therefore, according to charge no. 1 the pending cases for investigation being 289 were more than 10 times of the specially reported cases.

6. Learned Senior counsel submits that the very first charge drawn against the petitioner has no basis at all. If the petitioner joined on 21.02.2019 and in a period of three months approximately, the specially reported cases increased by 28 only, it



would be wrong to say that in his area every month 28 specially reported cases are registered. The fact is that in about 3 months there were increase of only 17 specially reported cases and one non-specially reported case.

7. Learned Senior counsel submits that on the date of joining of the petitioner, 28 cases were pending for supervision which has allegedly increased to 31 in three months. The petitioner, in his statement of defence before the Inquiry Officer stated that after his joining on 21.02.2019, immediately in the month of March, 2019 Parliament election was notified and all the police officers of the sub-division were sent in the election work on 05.04.2019, they returned after 22.05.2019. The petitioner explained to the Inquiry Officer that in Rosera Sub-Division there are three Parliamentary seats i.e. Khagaria, Samastipur and Ujiarpur where the elections were conducted in two phases on 23.04.2019 and 29.04.2019. The petitioner explained that during election period he was engaged in maintaining law and order and because of his efforts no untoward incident took place during the election.

8. Learned Senior counsel submits that as regards the supervision work, the petitioner explained that the number of pending cases for supervision has not been correctly provided in the charge-sheet. The fact is that the petitioner had conducted



supervision promptly in some of the cases and the pending cases had gone down over the period. In the month of May, the petitioner conducted supervision in 38 cases and in the month of June he conducted supervision in 53 cases leaving only 16 cases pending, thus, as on 01.05.2019, the pending cases for supervision were only 17 and not 31.

9. Learned Senior counsel further submits that as regards the third charge showing that the petitioner had not submitted any proposal under Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “the Service Rules”) against the offenders, the petitioner submitted that he had sent 17 proposals during the period 21.02.2019 and 01.05.2019 to initiate action under the Service Rules, thus, this allegation was also not correct.

10. Learned Senior counsel further submits that on perusal of the defence statement of the petitioner as contained in Annexure ‘P/6’ series, it would appear that the petitioner had submitted his defence to each and every charge with complete facts and figures but the Inquiry Officer did not look into the statement of defence of the petitioner.

11. Referring to Annexure ‘P/13’ to the writ application which is the copy of the inquiry report submitted by the Deputy Inspector General of Police, Saran Range, Chapra, learned Senior



counsel submits that the Inquiry Officer has only taken note of the allegations from the memo of charge and without appreciating the defence of the petitioner, the Inquiry Officer concluded that the petitioner has acted with gross negligence in conducting investigation and supervision of the cases. The Inquiry Officer has failed to consider the specific facts and figures which were submitted by the petitioner in his statement of the defence.

12. Learned senior counsel further submits that the petitioner was made available with a copy of the inquiry report with an opportunity to show cause and the petitioner submitted his second show cause vide Annexure 'P/14' to the writ application but the disciplinary authority passed an order under the Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as "the Pension Rules") whereunder he has inflicted a punishment of deduction of pension at the rate of 10% for five years. Learned Senior counsel submits that a perusal of the impugned order passed by the disciplinary authority as contained in Annexure 'P/15' would show that the disciplinary authority has simply gone by the inquiry report without adverting to the submissions of the petitioner in the second show cause.

13. It is further submitted that the petitioner preferred a review application before the government which has also been rejected vide memo no. 9335 dated 14th September, 2022



(Annexure 'P/18').

14. Learned senior counsel points out from the materials available on the record that his work was appreciated by the then Director General and other senior police officers from time to time. Several appreciation letters have been enclosed with the writ application.

15. Learned counsel has drawn the attention of this Court towards letter dated 01.07.2021 (Annexure 'P/7') addressed to the Inquiry Officer wherein this petitioner has pointed out that in violation of the provisions contained in Rule 17(16) and Rule 17(19) of the Service Rules, the petitioner was not made available a copy of the submissions of the Presenting Officer so that he may know the observations of the Presenting Officer.

Submissions on behalf of the State

16. A counter affidavit has been filed on behalf of the State. It is stated that the departmental proceeding initiated against the petitioner has been conducted according to the rules and procedures without any legal infirmity. Learned counsel for the State submits that the petitioner has been given sufficient opportunity to place his defence but the petitioner was unable to refute the allegations leveled against him.



Consideration

17. Having heard learned Senior Counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds that some of the charges mentioned in the memo of charge are apparently in conflict with the documents which have been enclosed with the memo of charge to support the allegations. There is no denial of the fact that this petitioner joined as Sub-Divisional Police Officer at Rosera on 21.02.2019. After his joining and till the date of submission of the review letter dated 03.06.2019, there were increase of only 17 cases which were specially reported cases but a bare perusal of the charge no. 1 shows that it has been shown as increase of 28 specially reported cases per month which is not correct. The defence statement of the petitioner in this regard has not at all been considered by the Inquiry Officer in his report. The disciplinary authority has also failed to consider the defence of the petitioner in this regard. The fact that the petitioner joined and immediately thereafter, he got engaged in maintaining law and order issues during the Parliamentary elections has also not been denied by the respondents.

18. This Court has been informed by learned Senior Counsel for the petitioner that the petitioner was singled out and proceeded against whereas the other persons who are named in



Letter No. 4110 of 03.06.2019 and who had worked for longer period in their respective areas and against whom also there was a proposal to approve initiation of disciplinary proceeding (Letter No. 2873 dated 30.06.2019) were left out.

19. This Court has carefully perused the statement of defence of the petitioner submitted before the Inquiry Officer (Annexure 'P/6'), the inquiry report (Annexure 'P/13'), a copy of the second show cause (Annexure 'P/14') and the order of punishment passed by the disciplinary authority contained in Annexure 'P/15'. It is evident on perusal thereof that the Inquiry Officer as well as the disciplinary authority did not consider the statement of defence of the petitioner. The disciplinary authority has though taken note of the defence but towards fag end of the inquiry report, he has directly reached to a conclusion without giving his reasoning as to why the statement of defence are not fit to be accepted.

20. In the opinion of this Court, the disciplinary authority has also failed to consider the second show cause of the petitioner and the statement of defence which he had earlier furnished before the Inquiry Officer as regards the charges framed against him. The disciplinary authority has recorded the opinion of the Inquiry Officer and then proceeded to pass the impugned order without adverting to the submissions of the petitioner in his show



cause notice. The only salient feature of the order of the appellate authority is the 'brevity' of the order as the reviewing authority in its short order has failed to consider the facts and figures which were submitted by the petitioner in support of his contention that the charges framed against him did not contain true and correct allegations. The grounds raised by the petitioner have not been addressed. By making general kind of observations, the review application of the petitioner had been rejected.

21. In the totality of the materials available on the record, this Court finds that the impugned orders are bad in law, suffers from the vice of arbitrariness in the opinion of the Inquiry Officer as well as the disciplinary authority as they have proceeded to submit an inquiry report and pass an order of punishment respectively without considering the defence of the petitioner. The impugned orders are, therefore, liable to be set aside and those are accordingly set aside.

22. The writ application is allowed.

23. The petitioner shall be entitled for the consequential benefits.

(Rajeev Ranjan Prasad, J)

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