

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.829 of 2019

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Amar Kant Chaubey Son of Sri Madan Bihari Chaubey resident of Village Dharahnia, Post Office- Bhabua, Police Station- Bhabhua, District- Kaimur, Bihar.

... .. Petitioner

Versus

1. The State Of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director- General of Police, Government of Bihar, Patna.
4. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
5. The Senior Superintendent of Police, Darbhanga.
6. The Superintendent of Police, Darbhanga.
7. The Sub- Divisional Police Officer, Jhanjharpur, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Rajeev Shekhar, Adv.
For the State	:	Mr. Dhurendra Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-06-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. While the petitioner was posted as Station House Officer (for brevity 'SHO') at Laukahi, he proceeded for leave of five days from 06.03.2006. The leave was sanctioned on the ground of demise in the family. The petitioner did not resume his duty w.e.f. 12.03.2006. He has overstayed for five days beyond the period of leave. The said lapse on the part of petitioner has been taken cognizance by the Authorities, who have issued a



charge memo dated 20.04.2006, as contained in Annexure-1 to the writ petition. The two charges for which the inquiry was conducted are as follows:-

“(क) जब ये लौकही थाना के थाना प्रभारी के रूप में पदस्थापित थे तो दिनांक 06.03.2006 के अपराहन मे 5 दिनों के आकस्मिक अवकाश में प्रस्थान किये थे । इनके आवदेन मे रिश्तेदार की मृत्यु होने का कारण लिखा गया था । इन्हे दिनांक 12.03.2006 को अपने कर्तव्य पर योगदान करना चाहिए था, परन्तु ये होली पर्व महत्वपूर्व विधिव्यवस्था कार्य होने के बावजूद भी स्वेच्छा से अवकाश में पिछड़े ।

(ख) कुख्यात अपराधी संजय यादव को गिरफ्तार करने का आदेश इनको दिया गया था, परन्तु इनके द्वारा गिरफ्तार नहीं किया गया । जबकि अपराधी थाना क्षेत्र में ही था तथा गश्ती के क्रम में थाना के अन्य पदाधिकारियों द्वारा उसे गिरफ्तार किया गया ।”

3. The second charge is of no relevance today, since there is no dispute that the accused, with respect to whom, charge no. 2 was framed, was arrested by raiding party, headed by the petitioner on 17.03.2006, which is evident from bare perusal of the order passed by the Appellate Authority. The petitioner has not been visited with any penal consequences on the strength of the second charge in the charge-memo.

4. Insofar as charge no. 1 is concerned, the petitioner produced some documents showing that he underwent treatment



in a Government hospital. Citing his illness and genuineness of this plea based on documents issued by the Government hospital, he has presented his defence in the proceeding before the Conducting Officer-cum-Sub-Divisional Police Officer, Jhanjharpur. The genuineness of petitioner's plea regarding illness based on documents has been accepted by the Conducting Officer in his inquiry report dated 24.01.2008, as contained in Annexure-2 to the writ petition. Despite acceptance of the petitioner's defence by the Conducting Officer and the specific opinion of the Conducting Officer holding the charge not proved, the Superintendent of Police, Madhubani, by order dated 09.02.2008, as contained in Annexure-3 to the writ petition, has awarded the petitioner punishment of withholding of increments for 6 months equivalent to one black mark.

5. The petitioner's counsel submits that without communicating any points of difference with findings of the Conducting Officer, or opportunity to the petitioner, the Superintendent of Police has straightaway proceeded to record the order of punishment. The order visiting the petitioner with penal consequences, is ignoring the findings favourable to the petitioner in the inquiry and not preceded by compliance with principles of natural justice and, therefore, is unsustainable.



6. Learned counsel for the State, on the other hand, submits that the petitioner was having a responsible position of SHO, the overstayal of leave has resulted in a situation where a very important festival like 'Holi' passed by without the SHO's presence in the police station. It is further submitted that the petitioner was at least obliged to intimate the Authorities if he could not resume duty after lapse of the leave period. These factors have weighed before the Superintendent of Police, Madhubani, in passing the order of punishment and, therefore, the order suffers from no infirmity. He further submits that the order being a minor punishment could have been passed in the manner in which it has been done. The same has duly been affirmed by the Appellate Authority by a reasoned and speaking order dated 13.02.2009, as contained in Annexure-4 to the writ petition.

7. Considering the rival submissions, this Court is of the opinion that the Superintendent of Police, Madhubani, was well within his jurisdiction to differ with the finding of the Conducting Officer. But, since the issue had been examined in a duly constituted proceedings and resulted in submission of an inquiry report, based on material produced in the course of inquiry, holding the charges not proved, the Disciplinary Authority, before visiting the petitioner with penal consequences



whether minor or major, could not dispense with the requirement of natural justice. It was incumbent upon the Disciplinary Authority to communicate his points of difference to the petitioner and allow him an opportunity to file his submissions thereupon, if it was proposed to pass an order of minor punishment as has been done in this case.

8. This Court further finds that the order of punishment passed by the Superintendent of Police, Madhubani, is based on a finding that failure on the part of the petitioner to intimate the Superior Authorities regarding his overstayal, is a charge for which he is found guilty. The order records as follows:

"थानाध्यक्ष एक जिम्मेदारी का पद है । यदि ये बीमार ही थे , तो इन्हें चाहिए था कि वरीय पदाधिकारियों को इस संबंध में दूरभाष से सूचित कर दें , जो इनके द्वारा ऐसा नहीं किया गया , जिसके लिए मैं आरोपित को दोषी मानता हूँ तथा इसके लिए इनके छः माह के वेतन -वृद्धि का समपहरण किया जाता है , जो एक कालांक के समतुल्य होगा , जिसका प्रभाव इनके अगले वेतन- वृद्धि पर नहीं पड़ेगा।"

9. Such findings have been recorded though no such charge has been framed against the petitioner alleging misconduct based on non-communication to his superior regarding overstayal. The charge memo did not contain this charge, for which the petitioner has been held guilty. No opportunity whatsoever, was granted to the petitioner with respect to this charge either before



the Enquiry Officer, or the Disciplinary Authority. The findings, therefore, on this ground also, arrived at without complying with natural justice, are unsustainable.

10. For the reasons noted above, the order of punishment dated 09.02.2008 (Annexure-3), therefore, is unsustainable in the eyes of law and, is hereby quashed. The order of the Appellate Authority dated 13.02.2009 (Annexure-4) being an affirmation of this unsustainable order, therefore, must also collapse. The order dated 13.02.2009 is also quashed. The petitioner is held entitled to all consequential benefits.

11. The writ petition is allowed.

(Madhuresh Prasad, J)

shyambihari/-

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