

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1092 of 2020

Dayanath Mishra son of Sri Satyadev Mishra resident of Ward no. 26, J.P. Nagar,
Supaul, P.S. Supaul, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. D.G. of Police, Bihar, Patna.
3. D.I.G. Tirhut Range, Muzaffarpur.
4. S.P. Sheohar.
5. Commandant B M P- 12, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shruti Sinha, Advocate Mr. Ebrahim Kabir, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC-8) Mr. Ruchikar Jha, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

13 05-07-2023 1. The petitioner is aggrieved by the order of punishment dated 28.03.2018, whereby and whereunder the Superintendent of Police, Sheohar has awarded the punishment of dismissal from services. The consequential order dated 09.04.2018 issued by the Commandant BMP 12, Saharsa has also been assailed.

2. In appeal, against the order of punishment, the Deputy Inspector General of Police (DIG) Tirhut Range, Muzaffarpur has modified the punishment and instead of dismissal, a lesser punishment has been awarded to the petitioner demoting him as constable from the rank of *havildar* for three years. This order dated 30.01.2019 has also been assailed and prayer has been made for consequential relief.



3. The facts leading to the order of punishment/s are that the petitioner was a member of raiding party and had conducted a raid at a village in connection with *Taryani* P.S. case No. 85 of 2013. The named accused was arrested with illegal arms and ammunition; and seizure list of the recovered arms and ammunition was drawn up. Charge-sheet has also been filed by the Police in the case against the accused persons.

4. During investigation, the petitioner had stated, while giving his statement under section 161 of Cr.P.C that arms and ammunition and mobile phone had been recovered from the accused arrested person. At the trial, the petitioner was examined by the prosecution on 26.05.2017, when he did not support the allegations against the accused persons and was declared hostile witnesses by the Additional Public Prosecutor.

5. The petitioner was thus proceeded against for alleged indiscipline, dereliction of duty, and negligence, since his deposition at the trial was not in support of the prosecution case. Charge memo dated 21.07.2017 to this effect was served on the petitioner. On his reply, being found unacceptable, proceedings commenced against the petitioner.

6. Charges were found true against the petitioner and by the impugned order dated 28.03.2018, he was dismissed from



service.

7. It is submitted by learned counsel for the petitioner that the DIG had interfered with the punishment of dismissal, since he found that there is no serious allegation against the petitioner involving moral turpitude, or acceptance of illegal gratification. He has recorded that gravity of the allegations are not of such nature, for which the punishment of dismissal from services under Rule 845 of the Bihar Police Manual should be awarded to the petitioner. According to the DIG, the petitioner being a Government servant has not shown promptness to support the prosecution version, while appearing as witness in the trial arising out of the *Taryani* P.S. case No. 86 of 2013. He has thus considered it appropriate to award the punishment of demotion for a period of three years.

8. From perusal of the charge memo dated 21.07.2017, it is obvious that the same does not contain any such charge alleging that the petitioner had not shown the requisite level of promptness in supporting the prosecution case while deposing as a witness in the trial. The charges in the charge memo were totally different, which read as follows:-

"आपके द्वारा उपरोक्त बयान के बावजूद दिनांक 26.05.17 को

गवाही के दौरान माननीय न्यायालय के समक्ष अभियोजन के विरुद्ध



पक्षद्रोही बयान दर्ज कराया गया तथा अभियुक्त के मेल में आकर अभियुक्त को नाजायज लाभ पहुँचाया गया। जो आपके द्वारा बरती गयी अनुशासनहीनता, कर्तव्यहीनता, लापरवाही, स्वेच्छाचारिता, एवं माननीय न्यायालय के समक्ष अभियोजन के विरुद्ध पक्षद्रोही बयान देने एवं एक अयोग्य पुलिस कर्मी होने का परिचायक है।"

Translation in English

"In spite of your aforesaid statement, a hostile statement against the prosecution was got recorded during evidence before the Hon'ble Court on 26.05.17 and the accused was given illegal advantage under a conspiracy which indicates your indiscipline, dereliction of duty, carelessness, arbitrariness giving hostile statement against prosecution before the Hon'ble Court and being an inefficient Police personnel."

9. In respect of the charges leveled in the charge memo, the DIG has recorded as follows:-

"लोक अभियोग के आरोप पर न्यायालय द्वारा इन्हें पक्षद्रोही घोषित किया गया। उक्त पत्र के अवलोकन से प्रतीत होता है कि मननीय न्यायालय द्वारा उक्त साक्षी के विरुद्ध कोई प्रतिकूल टिप्पणी नहीं की गयी है। अपचारी के विरुद्ध नैतिक अधमता, घूसखोरी बिहार पुलिस हस्तक नियम 1978 के नियम



845 में वर्णित सेवा से बरखास्तगी योग्य किसी अवचार आदि का गंभीर आरोप नहीं है, किन्तु इनका यह कृत्य पुलिस कर्मियों के व्यवहार के अनुरूप नहीं है।"

Translation in English

"He was declared hostile by the court on the allegation of the Public Prosecutor. On perusal of the aforesaid letter, it transpires that no any adverse remark has been made by the Hon'ble Court against the said witness..... There is no any charge of moral degradation, illegal gratification and any other misconduct warranting dismissal from service as per rule – 845 of Police Manual 1978 but his present act is not in conformity with the conduct of a police personnel.

10. The charge for which the proceedings were conducted, therefore, has been found by the DIG in appeal to be unsustainable and not proved; and he has therefore interfered with the order of dismissal awarded by the Superintendent of Police. He however has proceeded to award lesser punishment of demotion for three years from rank of *havildar* to constable by recording a finding which reads as follows:-

"अपचारी का सरकारी गवाह होते हुए भी अपनी गवाही में



अभियोजन को सबल बनाने की तत्परता नहीं देखी गयी।"

Translation in English

"The delinquent did not show any promptness to strengthen the prosecution through his evidence."

11. The petitioner's counsel has submitted that the findings of the DIG are unsustainable in the eyes of law. In spite of the order of the DIG, the petitioner has not been re-inducted in services. This shows the bias against the petitioner. The other Constables who comprised the raiding party, namely, Constable Nageshwar Kumar and Constable Sanjay Kumar had also deposed at the trial that they had not seen the seizure, but no departmental proceedings were initiated against them. At the trial, the petitioner had deposed whatever was true and the court had not made any adverse remarks against him.

12. The petitioner has also raised various other procedural infirmities such as there being no presenting officer, and alleged denial of opportunity to take help of other employees, as per Rule 17 (8)(a) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'Bihar (CCA) Rules').

13. Learned State counsel however submits that the



petitioner has a history of nine other punishments and six departmental proceedings. He further submits that because of the petitioner's deposition, the prosecution case suffered at the trial arising out of *Taryani* P.S. Case No. 86 of 2013. The proceedings were after giving due opportunity to the petitioner, the bonafides of which are evident from the fact that punishment of dismissal awarded to the petitioner has substantially been reduced by the DIG, to demotion from the post of *Havildar* to Constable.

14. On considering rival submissions, this Court would find that the proceedings were conducted in respect of the charges as contained in charge memo dated 21.07.2017. The petitioner had the opportunity of defending only the charges contained in charge memo dated 21.07.2017. The charge of not showing promptness, while deposing as witness at the trial, based on which the punishment of dismissal has been awarded, was not a charge in the charge memo dated 21.07.2017. The petitioner, therefore, had no opportunity to defend or answer the said charge.

15. It is trite law that the charged employee is to be given an opportunity to respond to the charges, considering the material sought to be relied upon by the department in the inquiry. It is only after such an exercise that a decision is to be



taken with respect to the charges, which have been stated in the charge memo. It is only if, and when the charges are established on a preponderance of probability that punishment, minor or major, may be awarded.

16. In the instant case, the charge of not showing promptness while deposing as witness in support of the prosecution case in *Taryani* P.S. Case No. 86 of 2013 was not a charge for which any inquiry had been conducted against the petitioner. In fact, the DIG had specifically recorded a finding that the issue against the petitioner did not involve any moral turpitude or acceptance of illegal gratification, therefore, it was specific finding of the DIG that the petitioner's deposition in the trial was not based on any extraneous or *malafide* considerations.

17. In these circumstances, another issue which arises for consideration is that the petitioner was under no legal obligation to bear testimony to the prosecution case and seizure list. He was required to depose the true facts and state of affairs while appearing as a witness in a criminal trial, irrespective of the prosecution case.

18. The DIG in the impugned order has taken note of the fact that trial court has not found any infirmity in the petitioner's deposition nor has it made any adverse comment on



the petitioner's deposition. That being so, the mere fact that the petitioner deposition was not in consonance with the prosecution case, *per se* could not have been held by the same DIG to be a misconduct.

19. In view of the foregoing discussions, this Court finds that the order of punishment awarded by the DIG under the order dated 30.01.2019 is unsustainable in the eyes of law. This Court would, therefore, quash the same, insofar as it imposes the punishment of demotion, since the findings based on which the punishment has been awarded are unsustainable.

20. The order of Superintendent of Police, Sheohar dated 28.03.2018 is also quashed.

21. Writ application stands allowed.

(Madhuresh Prasad, J)

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