

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3772 of 2019

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Sudhir Kumar Late SadaShiv Singh resident of village-Onama, P.S-
shekhopur (Sarai), District- Sheikhpura, presently posted as A.S.I, Naugachia,
P.S- (Mahila Thana) P.S- Naugachia District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through the principal Secretary department of home,
Govt. of bihar, Patna
2. The Director General of police, Govt. of Bihar, Patna Bihar
3. The Regional Inspector General of Police Bhagalpur Region, District-
Bhagalpur Bihar
4. The Deputy Inspector General of Police, East Range, Bhagalpur, District-
Bhagalpur Bihar
5. The Superintendent of Police, Naugachia, District-Bhagalpur Bihar
6. The Dy. Superintendent of police, Naugachia, District-Bhagalpur Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amrendra Kumar, Adv.
For the State	:	Mr. P.K. Verma (AAG-3)
		Mr. Saroj Kumar Sharma (AC to AAG-3)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 23-04-2024

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

2. The present writ petition has been filed for
quashing the District Order No.784/2018 issued under the
signature of Superintendent of Police, Naugachia contained in
Memo No. 1157 dated 31.08.2018 (annexed as Annexure-1) and
further for quashing the Appellate order contained in Memo



No.1213 dated 27.10.2018 (annexed as Annexure-2) passed by the I.G. East Zone, Bhagalpur whereby and where under the appeal filed by the petitioner against the punishment order has been rejected. Further prayer has also been made to quash the order bearing Memo No.1061 dated 18.12.2018 passed by the D.G.P., Bihar, Patna (annexed as Annexure-3) whereby the memorial application filed by the petitioner has been rejected.

3. Learned counsel for the petitioner submits that the order has been passed by the Original Authority without consideration of his case and in gross violation of natural justice and the Enquiry Officer has not permitted to cross-examine the witness. Counsel also submits that the punishment is cumulative which is major in nature. Counsel further submits that the doctor's prescription has not been considered at all. Counsel also submits that the petitioner was in duty of Bihar Police for more than 30 years having unblemished career, but in this case, without granting opportunity to defend, the petitioner's case was rejected. Counsel further submits that the petitioner has prescription of doctor which has not been considered by the Disciplinary Authority and the Higher Authority. Counsel submits that the petitioner was joined as Constable in Bihar Police on 01.07.1988 at Nalanda and he was promoted as an Assistant Sub-Inspector in the year 2012 itself. Counsel submits that on 18.03.2017, the



petitioner was deputed at Civil Court, Naugachia. Counsel submits that the petitioner reached Civil Court, Naugachia for his scheduled duty and schedule time, but he needed money so, he departed to the bank after intimating to one of his colleague namely Parmahansh Singh. But in the way, he felt unwell and visited to the doctor and subsequently, after examination, the doctor suggested him to stay in his clinic for whole day and in the early night, the petitioner was discharged, then he came to police line, Naugachia.

4. Learned counsel for the petitioner submits that the petitioner was found absent during the surprise visit of Dy. S.P., Naugachia on 18.03.2017. In this matter, a recommendation was made to the Superintendent of Police and the petitioner was suspended following the departmental enquiry. Counsel further submits that the petitioner has filed an application before Enquiry Officer in which he has narrated the actual facts with regard to his absence, but neither the Enquiry Officer, nor the higher officials have put any heed on his points and in result, the petitioner was punished for stoppage of increment for six months which is equivalent to 01(one) Black Mark. Counsel also submits that after receiving the said punishment order, the petitioner has challenged the same before the Appellate Authority, but in appeal also, his matter was rejected and subsequently, in memorial also, his



matter was not considered. Counsel submits that it is a case of violation of natural justice where the petitioner has went for his treatment informing to one of his colleague, but it has not been acknowledged at any time. Counsel for the petitioner is relying on a judgment in case of **Nirdula Jha Vs. The State of Bihar through the Secretary, Environment and Forest Department & Ors.** reported in **2019(4) PLJR 654.**

5. Learned counsel for the State on the other hand, submits that stand of the State is very clear that Sub Divisional Police Officer, Naugachia has intimated to the Superintendent of Police that on 18.03.2017 at about 02.13 p.m. he made a surprise inspection at Sadar Court 'Hajat' and during such surprise inspection, he found that the petitioner is absent since 10.03.2017 and upon query from one Paramhans Singh, it was informed that he got no information about the petitioner. And as such, the SDPO has reported that the petitioner was absent from duty and upon query from the said Paramhans Singh, it was informed that he was gone to Bank. Show cause issued that under whose order he has left the Hazat, but no satisfactory explanation was made and accordingly, the departmental proceeding was initiated against the present petitioner which resulted into suspension followed by enquiry followed by punishment of stoppage of increment for six months. Counsel further submits that the said



punishment order was challenged in appeal, but the Appellate Authority has rejected his appeal with a reasoned and speaking order. Counsel also submits that the petitioner's appeal memorial was also not considered on the ground that it is not maintainable. Counsel further submits that it is not a case of violation of natural justice rather it is a case in which opportunity to defend has not been provided to the petitioner.

6. In the light of the submissions made by the parties and documents available on record, it transpires to this Court that the punishment imposed is minor in nature and upon the physical verification of the higher officials himself, the petitioner was not found in the Sadar Court Hajat on duty. And the petitioner himself has accepted this point before the Enquiry Officer that he was not present, but the only plea he has taken that he went to take medicine. All those points the petitioner has raised before the authorities, but the authorities have not considered the same.

7. It transpires to this Court that High Court is sitting in civil review ought not to enter into the finding facts of the case as like Appellate Court. It is the case of substantive satisfaction of the officials to accept the reasons whether the petitioner was not present on duty. This Court only concern that officials prior to reaching on conclusion has followed due process or not. The officials following due process found that the petitioner was not



present on duty, during duty hours, and it is due to this reason, this Court is not inclined to interfere.

8. Upon perusal of the case of **Nirdula Jha (*supra*)**, it transpires to this Court that the facts of the present case does not tally with the facts of the case of **Nirdula Jha (*supra*)** as due to the reason that in the present case, the higher officials have inspected during the duty hour and found that the petitioner was not present, whereas, in the case of **Nirdula Jha (*supra*)** on which the petitioner is relying, the allegation on the petitioner/delinquent having conspired resulting in theft of various types of pieces of wood from the forest area resulted into huge loss to the Forest Department. Therefore, this Court is of the opinion that facts of both the cases are different and therefore, the ratio laid down in this case shall not apply.

9. Accordingly, with the aforesaid observations, this writ petition is hereby dismissed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
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