

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3182 of 2020

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Sakaldeep Prasad Son of Late Rupan Prasad Resident of Village- Jaitiya, P.S.
Bandy (Goh), District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Inspector General of Police Mithila Region Range, Darbhanga.
4. The Superintendent of Police Samastipur.
5. The Sub-Divisional Police Officer-cum- Conducting Officer, Dalsingh Sarai, Samastipur.
6. The Sub- Divisional Police Officer cum Deputy Superintendent of Police Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Nandan Prasad, Advocate
For the Respondent/s	:	Mr. Md. N.H. Khan (SC-1)
		Ms. Babita Kumari, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 12-01-2024

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

2. Learned counsel for the petitioner submits that
the present writ petition has been filed for quashing of Memo
No.687 dated 22.02.2019, passed in Disciplinary Proceeding
No.119 of 2018 and further for quashing the order contained in



Memo No.241 dated 17.09.2019, passed by the appellate authority by which the order stopping the increment of salary for a period of six months, which will be equivalent to stigma, are there.

3. Learned counsel for the petitioner submits that the petitioner was in police service of Bihar Police since 1987. Subsequently, promoted to the post of A.S.I. He submits that a charge memo has been issued to the petitioner in the form of 'Prapatra-Ka', which is Annexure-5, in which allegation has been made that he has arrested the accused of Sarairanjan P.S. Case No.53 of 2018, lodged under Section 498A of the Indian Penal Code under Section 3/4 of the Dowry Prohibition Act even after compromise made between the parties before the Lok Adalat and also for non-compliance of the order made in Sessions Court. Learned counsel for the petitioner submits that he has annexed Annexures-1, 2 and 3, in which direction was given to arrest the accused. Annexure-1 dated 05.06.2018 is the supervision report-I, Annexure-2 is the supervision report-II prepared by Superintendent of Police. In both reports a direction was given to the petitioner to arrest the accused and, therefore, in compliance of the order of superiors, petitioner has arrested the accused persons.



4. Learned counsel further submits that in response of memo of charge petitioner has responded but his points were not considered and disciplinary authority has passed the order imposing penalty of stoppage of increment of salary of six months equivalent to senior. In appeal the said order was confirmed. Counsel for the petitioner has raised primarily two legal points in this case. The first is that there is procedural lapses by way of not taking any oral evidence of anyone and non-consideration of his show-cause and secondly that prior to imposition of punishment second show-cause has not been provided. In addition to that counsel submits that the arrest has been made by the petitioner of the accused only in compliance of the order of his superiors and, therefore, he is not at fault.

5. Learned counsel for the State, on the other hand, submits that from the memo of charge, there are two allegations. The first allegation was that he has arrested the accused even after compromise and second allegation was his non-responsiveness towards a judicial order made by the Additional Sessions Judge. Counsel for the State also submits that from perusal of Annexure-5 a judicial notice has been taken by the Additional Sessions Judge and in the order-sheet, the finding of the Court has come as follows:-



“...ऐसा प्रतीत होता है कि वह माननीय उच्चतम न्यायालय एवं इस न्यायालय के आदेश के अनुपालन में कोई रुचि नहीं रखते हैं और उनके विरुद्ध उनके वरिष्ठ अधिकारियों द्वारा सकारात्मक कार्यवाही अपेक्षित है।...”

Counsel for the State submits that in the light of the observation made by a judicial order, there is no need to take any evidence and, hence, this part is sufficient to take action, but as per his involvement a minor punishment has been imposed which has rightly been done.

6. Upon going through the pleadings of the parties, documents on record and hearing the argument, this Court is of the view that the charges are on two parts. On one part, there is a plausible explanation from the petitioner that arrest has been made by him in the light of the directions made by his superiors, but so far as a judicial order against him has been made by the Additional Sessions Judge, he has not whispered anything nor he has taken any steps so that the said remark made in the judicial order against him should go. This Court is also of the view that any action taken by the disciplinary authority in the light of the said judicial notice, there is no need of further evidence to prove in the light of the Evidence Act. On the point of non-issuance of second show-



cause, this Court acknowledged a law laid down by the Hon'ble Supreme Court in case of **Registrar General, High Court of Karnataka and Another Vs. M. Narasimha Prasad** reported in **2023 (5) BLJ SC Page-25**, in which it has been held that requirement of second show-cause notice relating to proposed penalty was removed from Article 311 of the Constitution by constitution (42nd Amendment) Act, 1976 and this was well acknowledged and discussed in Constitution Bench also in case of Constitution Bench decision **the Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and others** reported in **(1993) 4 scc 727**. The Hon'ble Supreme Court has held in paragraph-21 as follows:-

*“As a matter of fact, the history of evolution of law relating to second show cause notice is almost forty years old. The requirement of a second show cause notice relating to the proposed penalty was removed from Article 311 of the Constitution by the Constitution (42nd Amendment) Act, 1976. The same was upheld by a Constitution Bench of this Court in **Union of India and Another Vs. Tulsiram Patel, (1985) 3 SCC 398**. However, a two-member Bench of this Court opened a small window in **Union of India and Others Vs. E. Bashyan,***



(1988) 2 SCC 196, which led to the decision in Union of India and Ors. Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588, wherein this Court held that the opportunity to respond to the findings of the inquiry officer is different from the opportunity to respond to the penalty proposed. Eventually, the issue got clarified in The Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others (1993) 4 SCC 727.”

7. In this background that action has been taken against the petitioner are well discussed in the charge memo, in the punishment order and in the appellate order which are completely in accordance with law and, therefore, requires no interference. Accordingly, this writ petition is dismissed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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