

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4063 of 2020

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Bipin Kumar Singh Son of Nageshwar Singh, Resident of Mokama,
Mokameh, P.S.-Mokama, Distt.-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Home (Police) Department, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Special Branch, Bihar, Patna.
4. The Additional Superintendent of Police, Special Branch, Bihar, Patna.
5. The Deputy Superintendent of Police (Special Branch), Gaya.
6. The Deputy Superintendent of Police (Security)-cum-Conducting Officer, Special Branch, Headquarter, Patna.
7. The Presenting Officer-cum-Police Inspector, Special Branch, Bihar, Patna.
8. The Superintendent of Police, Special Branch, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Choudhary, Sr. Adv Mr. Mukesh Kumar, Adv
For the Respondent/s	:	Mr. P.K. Verma (Aag3) Mr. Suman Kumar, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

10 02-05-2024 Learned Senior counsel for the petitioner and
counsel for the State are present.

2. The present writ petition has been filed for quashing of the order dated 25.11.2019 passed by the respondent no. 2 i.e the Director General of Police, Bihar, Patna which has been communicated to the petitioner vide memo no. 1169 dated 01.12.2019 (Annexure-1) through the Deputy Superintendent of Police (Special Branch) Gaya whereby and



where under the Respondent No. 2 in exercise of power conferred under rule-853(a) of Bihar Police Manual has reviewed the order passed by the Superintendent of Police, Special Branch, Bihar, Patna and has imposed the punishment of dismissal from service upon the petitioner. Further prayer has been for quashing of the enquiry report dated 24.08.2018 submitted by the Deputy Superintendent of Police, (Security)-cum-Conducting Officer, Patna and directing the respondents to reinstate the petitioner in service with all the consequential benefits. Further prayer has been made that the order passed by the Respondent No. 2 in purported exercise of power under Rule 853(a) of Bihar Police Manual to be declared as arbitrary, unreasonable, in gross violation of the principle of natural justice and illegal and for further declaration by this Court that order dated 02.01.2019 contained in Memo No. 25 passed by the respondent no. 3 (Disciplinary Authority) is valid, legal, justified and in accordance with law.

3. Learned counsel for the petitioner submits that petitioner was appointed as constable under Patna District Force having Brass No. 370. Counsel further submits that during the period from January, 2006 to March, 2012, he was deputed as Bodyguard of an M.L.A. of Mokama Legislative Assembly. He



further submits that service of the petitioner is clean and he was promoted in the cadre of A.S.I. in the year, 2013. He further submits that he remained working under Chowk Thana/Kotwali Police Station and New Police Line, Patna. On 14/11/2014, an F.I.R. being Bihta P.S. Case No. 859/2014, was registered against two named persons namely Anant Singh, M.L.A. Mokama and Bantu Singh and 16 unknown persons for the offences under section 363/365/34 of I.P.C. Counsel further submits that after about 8 months of the said occurrence, the investigating officer got the statement of victim namely Raju Singh recorded under section 164 of Cr.P.C. on 04/07/2015, and in his statement, the name of the petitioner has been figured for the first time that he accompanied the named accused Anant Kumar Singh. Learned Senior Counsel put emphasis that the petitioner was Personal Security Officer of Anant Kumar Singh an MLA from January, 2006 to March, 2012. He was promoted from the post of constable to A.S.I in the year, 2012. After his promotion to the post of A.S.I, he was relieved from personal security duty of Anant Kumar Singh but on the basis of the statement of the victim recorded under section 164 of Cr.P.C., the petitioner was arrested and he was sent to judicial custody. Later on, the petitioner was released on bail. Thereafter, a



regular departmental proceeding bearing Departmental Proceeding No. 03/2016 was initiated against the petitioner. The suspension of the petitioner was revoked w.e.f. 06/09/2016. Counsel submits that the petitioner was served Charge Memo by the Superintendent of Police, Special Branch, Bihar, Patna vide order no. 278 contained in Memo No. 627 dated 02/02/2016. Counsel further submits that the charge memo contains three charges against the petitioner i.e. the first charge is that the petitioner was deputed as Bodyguard of Mokama MLA and being a police personnel, the petitioner has committed offence of ransom, abduction, murder etc. Second charge is that the petitioner was arrested and sent to jail on 03/07/2015 in connection with Bihta P.S. Case No. 859/2014 dated 14/11/2014 under section 363,365 and 34 of I.P.C. and third charge is that the petitioner being a police personnel, participated in the heinous crime which has maligned the face of the police among the people. Counsel further submits that initially one Amar Kant Chaubey, Inspector of Police, Town was appointed as conducting officer. Subsequently, conducting officer was transferred and in his place one Mritunjay Kumar Singh, Dy.S.P. (Security) was appointed as conducting officer in the said departmental proceedings. Counsel further submits that initially,



the enquiry was conducted without appointment of the presenting officer. The conducting officer submitted his finding and supplementary finding. But, the high Officials, upon going through the said enquiry report realized that there is violation of Rule 17 of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. Thereafter, the another enquiry was made and petitioner was held guilty. All the charges leveled against the petitioner was proved to be correct. Thereafter, the matter was referred to the disciplinary authority. After submission of enquiry report, the Additional Director General of Police, Special Branch, Bihar, Patna gave his noting in the file, as to whether, petitioner was physically present in the escort duty or not, is a subject of enquiry, and therefore, in order to make such point clear, the file was again sent to the conducting officer vide Memo No. 4153 dated 14/07/2017. After enquiry, report was submitted and charges were proved to be correct against the petitioner. The matter was, thereafter, referred before the disciplinary authority and the disciplinary authority upon going through the charges, passed a reasoned order, differs with the finding of the conducting officer and exonerated the petitioner from all the charges leveled against him and was released from suspension with effect from 06.09.2016. His



period of custody was adjusted in extraordinary leave and accordingly, order for payment of arrears of salary to the petitioner was made.

4. Learned Senior counsel submits that neither the petitioner nor any authority has filed an appeal before the Director General of Police, Bihar, Patna against the order passed by the disciplinary authority dated 02.09.2018 but after 4-5 months, the petitioner was served a show-cause notice whereby he was asked an explanation from the dismissal of services within a period of 15 days. After receiving the show-cause, the petitioner realized that Director General of Police, Patna in exercise of power conferred under Rule 853(a) of Bihar Police Manual has decided to reconsider the order passed by the Disciplinary authority in which it has been mentioned that D.G.P. (Respondent No. 2) has not found the punishment imposed to the petitioner in proportionate to the gravity of charges and therefore, in the light of the findings of the conducting Officer, the said show-cause was issued to the petitioner, as to why, he should not be dismissed from the services. Learned Senior counsel submits that Respondent No. 2 has passed the order even after the submission of the show-cause with regard to his defence in which he has decided the



punishment of the petitioner from removal of the service and this order passed by the D.G.P. Patna is the order impugned before this Court. Learned Senior counsel submits that upon going through the order, the only basis for the Director General of Police, Patna is that the grave charges has been alleged against the petitioner. Learned Senior counsel submits that it is true that the alleged kidnapped person namely Raju Singh made a statement under Section 164 of the Cr.P.C. before the Magistrate in which he has narrated the involvement of the petitioner in kidnapping. He submits that this was the basis for taking decision by the Director General of Police, Patna against the petitioner. He further submits that on the other hand, in the criminal trial, till date, charges has not been framed. In these circumstances, on the one hand the disciplinary proceeding has exonerated the petitioner whereas the Director General of Police, Patna on the other hand reviewed the order of the disciplinary authority and has dismissed the petitioner from the service. Counsel submits that the criminal case and particularly the statement under Section 164 of Cr.P.C. which is against the petitioner, no further proceeding in criminal trial has been followed.

5. Learned Senior counsel for the petitioner concludes



his argument putting emphasis on the findings of the Director General of Police order (order impugned) that the only allegation which has been found by the Director General of Police is that the charges are grave. It is due to this reason, he has reviewed the order. Learned Senior counsel for the petitioner submits that in the light of the above circumstances, it shall be gross injustice with the petitioner, particularly, when the disciplinary authority has meticulously examined the entire evidence and materials on record, thereafter, reached on the finding which was not been discussed in the order passed by the D.G.P. and merely on the basis that charge is grave, he has reviewed the order passed by the disciplinary authority. As such, learned Senior counsel submits that this order passed by the D.G.P. must be set aside.

6. Counsel for the State submits that order passed by the Director General of Police, Patna has been passed completely in accordance with law as per Rule 853(A)(a) of Bihar Police Manual empowers the Director General of Police to review the order passed by the Disciplinary authority even if the order has not been challenged. He further submits that in the said order, the punishment has been imposed for which reasons has been assigned that charges are grave, material come against



the petitioner in the statement under Section 164 of the Cr.P.C. of the victim who was kidnapped as well as the doubt created on the command issued to the petitioner for his duty which was with the Governor of Goa during the relevant period of time.

7. In the light of the submission made by the parties, this Court is of the view that the petitioner was exonerated from the charges by the Disciplinary Authority who has passed the order after meticulous examination of the entire evidences i.e oral and documentary which he has well discussed in the final order whereas the Director General of Police, Patna has passed order under 853(A)(a) of the Bihar Police Manual assigning his own reasons solely based on the basis of the evidence of the victim who has narrated the statement under Section 164 of the Cr.P.C. This Court holds that the order passed by the Director General of Police, Patna is non jurisdictional order but on the other hand the trial in which evidence under Section 164 has been passed, has not proceeded under what so reason it may be, but the ultimate sufferer is the petitioner.

8. As such, this Court hereby directs that the order passed by the Director General of Police, Patna i.e. the order dated 25.11.2019 shall not operate till the final decision in criminal trial i.e. Criminal Trial of Bihta P.S. Case No. 859 of



2014. This order shall become effective only when the Bihta P.S. Case No. 859 of 2014 shall be concluded and results into conviction to petitioner.

9. In the meantime, it is directed to the D.G.P., Patna as well as the concerned authority to accept the joining of the petitioner.

10. Accordingly, this writ petitioner is hereby allowed.

(Dr. Anshuman, J)

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