

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7259 of 2016

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Narendra Singh son of Sri Ram Naresh Singh Resident of Village- Bhel
Dumra, Police Station- Muffasil, District- Bhojpur at Ara.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Rail, Patna.
4. The Superintendent of Police, Rail, Muzaffarpur.
5. The Sergeant Major-cum-Conducting Officer, Rail, District- Katihar.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Bindhyachal Singh, Sr. Advocate
	:	Mr. Sushil Kumar Singh, Advocate
For the Respondents	:	Mr. Prabhat Ranjan, AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 15-01-2024

Heard Mr. Bindhyachal Singh, learned Senior counsel for
the petitioner and Mr. Prabhat Ranjan, learned AC to GP-6 for the
State.

2. The present writ petition has been filed for the
following reliefs :

*“(i) To issue an appropriate writ preferably in
the nature of certiorari for setting aside the office order
no. 566 bearing Memo No. 901 dated 09.04.2012 issued
by the Superintendent of Police, Rail, Muzaffarpur by
which punishment of dismissal from service has been
imposed upon the petitioner.*

*(ii) To issue an appropriate writ preferably in
the nature of certiorari for setting aside order bearing*



Memo No. 537 dated 22.05.2013 issued by the Deputy Inspector General of Police, Railway, Bihar, Patna whereby and whereunder the appeal memorial preferred by the petitioner against the order dated 09.04.2012 has been dismissed.

(iii) To issue an appropriate writ preferably in the nature of certiorari for setting aside the order bearing Memo No. 242 dated 19.01.2015 by which the Revision Memorial representation preferred by the petitioner against the aforementioned orders has been rejected.

(iv) To issue an appropriate writ preferably in the nature of mandamus commanding upon the respondent authorities to reinstate the petitioner in service with all consequential benefits.

(v) To grant any other relief/reliefs for which the petitioner may be found entitled to in the peculiar facts and circumstances of the case."

3. Learned Senior counsel for the petitioner submits that the petitioner was a Constable in Railway Protection Force who was posted at Rail Police Post, Sitamarhi at the relevant time. On 08.06.2003 one Shivpujan Ram Incharge of Rail P.P. Sitamarhi made a Sanha vide Sanha Entry No. 146 stating therein that at about 7:15 A.M. one Bhim Singh, S.I. went to the Police Post and informed that while he was sitting in front of the Police Post in the meantime Train No. 276 down arrived at the platform and he saw that Md. Firoz Khan, Constable No. 610 carrying two black colour bags unboarded the train from the opposite direction of the train and



proceeded towards Barrack where he kept the bags in the room no. 1. On 09.06.2003 at about 1:00 A.M. one Sri Shivpujan Ram along with other police officials including Md. Morkim Constable No. 498 proceeded in verification of Sanha No. 146 and in course of verification Sri Shivpujan Ram searched room no. 1 of G.R.P. Barrack and found room no. 1 locked. Upon enquiry Md. Morkim asked that one key was lying with him who is presently residing with his family on rent out side the barrack and he brought the key of that room and the room was opened and searched by Sri Ram and it was found that three beds were lying in that room in which the bed situated from the western side was the bed of Md. Firoj Khan, Birendra Kumar Rai and Shakaldeo Prasad Yadav accordingly, upon search of the room two black colour bags were found from beneath the bed of Md. Firoz Khan. The bags were opened, nine (9) packets of ganja were found from the big bag and two (2) packets of ganja were found from the small bags total weighting about 20 Kilograms. The Constable was not present in the Barrack, Shivpujan Ram felt technical difficulties in making seizure of the ganja and after considering this fact he locked the room with additional lock and continued vigil over it. On 09.06.2003 Sri Shivpujan Ram, P.P. Incharge, made another Sanha vide Sanha No. 159 stating therein that on 09.06.2003 he opened the room and found that the door of the room was uprooted and both the bags which were brought down from Train No. 276 by the Constable Md. Firoz Khan were



missing though the locks were intact but the door was uprooted. It was further stated that Havildar Birendra Kumar Rai, Constable Shakaldeo Prasad Yadav along with Md. Firoz were living in the room no. 1.

4. Learned Senior counsel for the petitioner further submits that pursuant to the aforesaid, the Superintendent of Police, Rail, Muzaffarpur (Respondent No. 4) ordered preliminary inquiry into the matter upon which the Rail Inspector of Police, Samastipur held an inquiry and submitted his report vide Memo No. 846 dated 23.06.2003 and recommended for initiation of departmental proceeding against the petitioner along with Md. Firoz Khan, Satayendra Rai and Devendranath Sharma. The Superintendent of Police, Rail, Muzaffarpur (Respondent No. 4) vide his Memo No. 1399 dated 30.06.2003 suspended the petitioner along with Md. Firoz Khan, Satayendra Rai, Devendranath Sharma and Shakaldeo Yadav and the proceeding was initiated against the petitioner. The petitioner submitted his written defence on 04.08.2003 in which he did not dispute the occurrence but denied his involvement in snatching, concealment of ganja and breaking of Barrack door. The Enquiry Officer after considering the written defence has submitted his enquiry report but the copy whereof was not served upon the petitioner along with second show cause notice and the petitioner was dismissed from service vide order dated 01.04.2004. The petitioner had challenged the same before the



appropriate authority wherein specific plea that findings of the Enquiry Office was never served upon the petitioner along with second show cause notice and the same was not considered by the appellate authority but the appeal of the petitioner was dismissed vide order dated 15.05.2004. Thereafter, the petitioner has preferred the memorial against the two orders but the same was also rejected by the Director General-cum-Inspector General of Police, Bihar, Patna (Respondent No. 2) vide order dated 28.06.2005.

5. Learned Senior counsel for the petitioner further submits that then the petitioner has approached this Hon'ble Court in C.W.J.C. No. 10804 of 2005 and the same was allowed by order dated 08.02.2012 and the order of dismissal dated 01.04.2004, appellate order dated 15.05.2004 as well as memorial order dated 28.06.2005 are quashed with a direction to the petitioner to appear before the Superintendent of Police, Railways, Muzaffarpur (Respondent No. 4) along with a certified copy of this order within one week from the date of receipt of the certified copy. Learned Senior counsel for the petitioner submits that in compliance of the order dated 08.02.2012 passed in C.W.J.C. No. 10804 of 2005, the petitioner made an application dated 24.02.2012 before the Superintendent of Police, Rail, Muzaffarpur (Respondent No. 4) and the Respondent No. 4 after receipt of the aforesaid had issued second show cause notice to the petitioner bearing Memo No. 571



dated 27.02.2012 along with the enquiry report. The petitioner made reply dated 13.03.2012 to the Respondent No. 4 explaining therein in detail as to why the charges levelled against the petitioner cannot be set to be proved on preponderance of probabilities. The petitioner specifically asserted that the charges against him remained mere charges since the department failed to prove the charges on preponderance of probabilities and the Enquiry Officer was himself not sure about even the knowledge of the petitioner with regard to the incident alleged. The Enquiry Officer has only opined that if the petitioner was aware of the incident he should have informed his superior. The said opinion recorded by the Enquiry Officer unambiguously established the fact that the petitioner was not even aware of the incident so his involvement was not proved in the proceeding of the Respondent No. 4 and without considering the reply dated 13.03.2012 of the petitioner, the Respondent No. 4 passed the order dated 09.04.2012 imposing punishment of dismissal from service against the petitioner on the ground that the petitioner has not brought any fact in his reply to deny the charges levelled against him. Thereafter, the petitioner preferred an appeal before the Deputy Inspector General of Police, Rail, Bihar, Patna (Respondent No. 3) against the District Order No. 566/2012 dated 21.11.2012. It is pertinent to mention that the Deputy Inspector General of Police, Rail, Bihar, Patna (Respondent No. 3) directing the Superintendent



of Police, Rail, Muzaffarpur (Respondent No. 4) calling parawise reply. The Respondent No. 4 had made parawise reply to the appeal preferred by the petitioner. The Deputy Inspector General of Police, Rail, Bihar, Patna (Respondent No. 3) has relied on the parawise reply made by the Respondent No. 4, has rejected the appeal preferred by the petitioner had issued bearing Memo No. 537 dated 22.05.2013 on the ground that the petitioner in his appeal memorial failed to produce any fact denying the charges. The petitioner thereafter preferred memorial representation before the Director General of Police, Bihar, Patna (Respondent No. 2) on 15.07.2013 against the order dated 22.05.2013. The Director General of Police, Bihar, Patna (Respondent No. 2) passed the order bearing Memo No. 242 dated 19.01.2015 by which the memorial representation preferred by the petitioner has been rejected on the ground that the petitioner failed to produce the new fact denying the charges. Learned Senior counsel for the petitioner submits that from a bare perusal of the enquiry report it appears that the charge has not been proved in the enquiry and in the departmental proceeding, the charges are to be proved by the department. The charged employee cannot be asked to prove his innocence. A bare perusal of the order passed by the Superintendent of Police, Rail, Muzaffarpur (Respondent No. 4), Deputy Inspector General of Police, Rail Patna (Respondent No. 3) and the Director General of Police, Bihar, Patna (Respondent No. 2) would reveal that all the



respondent authorities have passed their respective orders mentioning that the writ petitioner failed to rebut the charges. The enquiry report submitted by the Enquiry Officer, it would reveal that major punishment like dismissal from service has been awarded against the petitioner not on the basis of charges proved against him rather the punishment has been awarded on the hypothesis that the petitioner being a member of the escort party he must have been aware of the illegal activities of Md. Firoz Khan. As per the conducting officer the only mistake committed by the petitioner is that had he been aware of the illegal activities of Md. Firoz he should have informed his superior officials. The conducting officer was himself not sure whether the petitioner had the knowledge of the illegal activities of Md. Firoz Khan or not and during the entire departmental proceeding this charge could not be proved against the petitioner and the petitioner had the knowledge of the illegal activities carried by the Constable No. 610, Md. Firoz Khan but this much is admitted and proved that Sri Shivpujan Ram, Bhim Singh and Md. Morkim were fully aware of the illegal activities of Md. Firoz Khan and Sri Shivpujan Ram himself admitted that he put additional lock on the door of the room which was uprooted and the alleged ganja was taken away.

6. Learned counsel for the State, on the other hand, submits that pursuant to the direction of this Hon'ble Court passed in C.W.J.C. No. 10804 of 2005 vide order dated 08.02.2012, the



authority concerned had given the ample opportunity to the petitioner and also served his second show cause notice along with copy of memorial of charge and the proceeding was conducted in accordance with law and ample opportunity was given to the petitioner to defend himself and there is no violation of principle of natural justice as well as Rules.

7. Considering the aforesaid facts, it appears that the charges levelled against the petitioner has never proved in the proceeding and merely on the basis of conjectures and surmises based on hypothesis only on the ground that the petitioner was a member of the escort party and he must have been aware of the illegal activities of Md. Firoz Khan and as per report of the conducting officer the only mistake committed by the petitioner is that he he been aware of the illegal activities of Md. Firoz, he should have informed to the superior officials and it appears that the charges levelled against the petitioner has never proved in the proceeding.

8. In view of the above, the order no. 566 bearing Memo No. 901 dated 09.04.2012 (Annexure-17) passed by the Superintendent of Police, Rail, Muzaffarpur (Respondent No. 4), the order bearing Memo No. 537 dated 22.05.2013 (Annexure-20) passed by the Deputy Inspector General of Police, Railway, Bihar, Patna (Respondent No. 3) as well as order bearing Memo No. 242 dated 19.01.2015 (Annexure-22) passed by the Director General of



Police, Bihar, Patna (Respondent No. 2) are hereby set aside. The Respondent No. 4 is directed to pay all the consequential benefits to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this judgment.

9. The writ petition is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.05.2024
Transmission Date	N.A.

