

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19081 of 2014

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Sumant Sharan Modi S/o Late Kashi Modi Resident of Mohalla-Sheikhpura
Mali Tola, P.S. Hawaiiadda (Aerodrum), District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home (Police), Bihar, Patna.
3. The Special Secretary, Department of Home (Police), Bihar, Patna.
4. The Director General and Inspector General of Police, Bihar, Patna.
5. The Inspector General of Police (Headquarter), Patna.
6. Inspector General, Special Vigilance Unit-cum-Conducting Officer, Bihar, Patna.
7. The Deputy Inspector General of Police, Sahabad Range, Rohtas.
8. The Superintendent of Police, Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate
For the Respondent/s : Mr.Anshuman Singh, G.P.-24

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 04-01-2024

Heard Mr.Sanjay Kumar, learned counsel for the
petitioner and learned counsel appearing for the respondents.

2. This writ application has been filed for the following
reliefs:

(I)For issuance of a writ/order/direction for quashing the
resolution, as contained in Memo No.689 dated 28.01.2014, issued
under the signature of the Special Secretary to the Government,
Department of Home (Police), Bihar, Patna whereby and where-
under in purported exercise of power under Section- 43 (b) of the
Bihar Pension Rules, the petitioner was inflicted with a



punishment by way of withholding 5% pension and thereafter nothing would be paid except subsistence allowance for the period of suspension.

(II) For quashing the order, as contained in letter No.5623 dated 08.07.2014, issued under the signature of Special Secretary, Department of Home (Police), whereby the review/appeal filed by the petitioner against the resolution, as contained in Memo No.689 dated 28.01.2014, has been rejected out rightly.

(III) For issuance of a consequential writ/order/direction not to give effect of the aforesaid impugned orders and release the entire pensionary amount of the petitioner.

(IV) For grant of any other relief/reliefs to which the petitioner may be found legally entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Sub-Inspector of Police in the Bihar Police on 09.02.1975 and, after completion of successful training he had given his joining on 24.01.1976 at Begusarai. Subsequently, he was promoted against the post of Police Inspector in the year 1986 and, thereafter, again he was promoted in the rank of Deputy Superintendent of Police on 16.01.2007 and



joined as S.D.P.O., Dumraon in the district of Buxar. Learned counsel for the petitioner further submits that while the petitioner was posted as S.D.P.O., Dumraon, Buxar, one Simari Police Station was under his territorial jurisdiction. On 23.09.2009 Raj Kumar Paswan, who was Officer-in- Charge of the Police Station went to Mukundpur village for arresting one accused, namely, Dinanath Chaudhary in connection with Simari P.S Case No.67 of 2009. During course of arrest, the villagers attacked on the raiding party and the Officer-in-Charge and other constables sustained grievous injuries. Thereafter, an FIR was instituted bearing Simari P.S. Case No.141 of 2009. When the matter was supervised by the higher officials, thereafter a decision was taken to put only the petitioner under suspension and a formal order as contained in Memo No.651 dated 22.01.2010 was passed by the order of his Excellency the Governor and undersigned by the Deputy Secretary to the Government, Department of Home (Police), whereby the petitioner was kept under suspension under Rule-9 (1) (a) of the Bihar Civil Servants (Classification, Control and Appeal) Rules, 2005 on the ground that in course of arresting of one Dinanath Chaudhary in connection with Simari P.S. Case No.67 of 2009, there was a complete lack of control and supervision on the part of the petitioner and on this ground alone the petitioner was



suspended. After suspension the action of the respondent authorities was highly prejudicial to the interest of the petitioner as his headquarter was fixed in the office of the Deputy Inspector General of Police, Purnea Range, Purnea which is far away from the place of posting of the petitioner. In the meantime, the respondent authorities took a decision to initiate a departmental proceeding for the alleged charges of supervisory lapse during the course of raid conducted in Simari P.S. Case No.141 of 2009. The memo of charge, as contained in Memo No.2807 dated 05.04.2010, was issued under the signature of the Deputy Secretary to the Govt., Department of Home (Police), Bihar, Patna and altogether three charges have been framed against the petitioner and the respondent authorities provided the names of two witnesses, namely, Mr.P.N. Rai, Zonal I.G., Patna and one Mr. A.K. Ambedkar, D.I.G.. Sahabad Range, Rohtas and the petitioner was directed to file his reply to the memo of charge within fortnight.

4. Learned counsel for the petitioner submits that in compliance of the aforesaid order and direction, the petitioner filed his reply on 28.04.2010 to the Deputy Secretary to the Government, Department of Home (Police), Bihar, Patna in which the petitioner refuted the alleged charges. He produced several



documents showing his innocence in the entire episode. The petitioner tried to intimate that the entire police activities was done under the active control of the then S.P., Buxar. Several constables were employed/deputed from the Police Line and the S.P. himself controlled the entire operation. The petitioner also intimated therein that in the supervision note not a single person came forward and give any statement about the supervisory lapses or any sort of activities or overt act on the part of the petitioner nor the members of the raiding party alleged any sort of overact or violation of direction of S.P. Buxar. In course of supervision, several independent witnesses deposed before the supervising authority and there was no case of police atrocities but someone deposed before the supervising authority about the involvement of the petitioner on the ground that either of the family members were accused in the Simari P.S. Case No.141 of 2009. The accused never made allegation by way of filing complaint before the court of competent jurisdiction or the government officials or the department head about the highhandedness of the police team. The reply to the memo of charge of the petitioner dated 28.04.2010 was duly received on the same day. The Inspector General of Police, Patna Zone, Patna examined the case of the petitioner and found the suspension order of the petitioner harsh and excessive and vide



his letter contained in Memo No.1490 dated 07.09.2010 he recommended for revocation of the same to the Inspector General of Police but, unfortunately, the suspension of the petitioner was not revoked. Though the explanation of the petitioner was thoroughly examined by several higher officials of the department and thereafter a decision was taken to recommend for revocation of suspension of the petitioner. The Director General of Police, Bihar, Patna accepted the recommended sent I.G., Patna Zone, Patna but the revocation of suspension of the petitioner was not considered by the respondent authorities then the petitioner filed a writ application bearing C.W.J.C. No.6339 of 2011 challenging the suspension order dated 22.01.2010 and the same was disposed of vide order dated 16.05.2011 with a direction to the respondent authorities to take a final decision in the proceeding pending against the petitioner and also in respect of his suspension positively within three months from the date of receipt/production of a copy of this order. This Hon'ble Court further directed the respondent authorities to calculate and pay the arrears of subsistence allowance as per law within the aforesaid period. Learned counsel for the petitioner further submits that after the order of this Hon'ble Court the same was made available to the Principal Secretary, Department of Home (Police) on 30.05.2011



with a request to take steps for compliance of this Hon'ble Court's order. But, no order was passed in terms of the direction of this Hon'ble Court and the petitioner was dragged in a prolonged departmental proceeding which culminated in awarding major punishment after the retirement of the petitioner from the service. Learned counsel for the petitioner further submits that in continuation thereof, the Department of Home (Police), Bihar, Patna issued a resolution, as contained in Memo No.4319 dated 14.06.2011 intimating the petitioner about initiation of a departmental proceeding. The Inspector General of Police, Special Vigilance Unit, Patna was appointed as Conducting Officer and the Deputy Inspector General of Police (Administration) was appointed as Presenting Officer and the petitioner was directed to appear in person in the office of the Conducting Officer. After initiation of the departmental proceeding, the petitioner participated in the proceeding. The Presenting Officer examined the witnesses and produced the evidence. The petitioner was provided opportunity to cross-examine the prosecution witnesses. The petitioner filed his last explanation of defence on 10.08.2011 before the Conducting Officer wherein the entire facts and circumstances of the matter have been discussed elaborately. The petitioner also tried his level best to produce all the evidences so



far as to enable the conducting officer to take a just decision. The petitioner was also intimated therein that the Superintendent of Police was also noticed by way of issuance of proper notice dated 10.03.2010 and reminder as contained in memo no. 4104 dated 18.05.2010 for the same occurrence wherein the Superintendent of Police submitted his explanation on 23.10.2010, which was made available to the petitioner to the Conducting Officer and the explanation submitted by the Superintendent of Police, was accepted by the Govt. in which he accepted that he himself had controlled the entire action of the police team and all the actions were done in accordance with law. There was no supervisory lapses or violation of nay order or direction of the higher officials. The Superintendent of Police has not written even a single line against the petitioner in his show cause reply but no action has been taken against any persons and only the petitioner has been made a scapegoat in the present case.

5. Learned counsel for the petitioner submits that after completion of the departmental proceeding, the Conducting Officer submitted his report on 12.08.2011 in which charges were not proved against the petitioner. The Special Secretary to the Government issued a letter dated 17.11.2011 to the petitioner with respect to the report of the Conducting Officer. The Special



Secretary in his letter dated 17.11.2011 intimated the petitioner about the difference of opinion against the report of the Conducting Officer. A show cause notice was issued to the petitioner with a direction to file a reply within 15 days and from a bare perusal of the letter no.8337 dated 17.11.2011, it would be evident that the opinion formed by the disciplinary authority was perverse and beyond the scope of the charges enumerated in the memo of charge and in compliance of the letter no.8337 dated 17.11.2011, the petitioner filed his detailed reply on 02.12.2011 stating therein that the Conducting Officer has exonerated him from all the charges and the Superintendent of Police himself took all the responsibility/charges upon his head and he has requested the Disciplinary Authority to exonerate him from all the charges and revoke his suspension. Learned counsel for the petitioner further submits that in course of departmental proceeding the Respondent Authority sent a proposal as contained in letter no. 2829 dated 26.03.2012 to the Bihar Public Service Commission for withholding of five increments but the BPSC after examining the entire fact of the matter turned down the proposal in its 14th sitting. Thereafter, the Department again made a proposal for withholding of two increments vide his letter dated 26.06.2012, then the BPSC accepted the proposal prior to the date of



retirement. Learned counsel for the petitioner submits that the Department received the recommendation from the BPSC but kept the matter pending so that the petitioner might be retired from the service and then the action could be taken against the petitioner. Thereafter, the State Government again made a proposal for withholding of 10% pension but the BPSC refused to give its consent on the ground that the same was harsh and excessive. Then, lastly a decision of withholding of 5% pension was taken and was sent for approval to the BPSC, the BPSC approved the same. The Disciplinary Authority revoked the suspension of the petitioner on 13.04.2012 just before 3 ½ months before the retirement of the petitioner. Learned counsel for the petitioner submits that the petitioner retired from the service w.e.f. 31.07.2012. The respondent authorities converted the departmental proceeding under Rule 43 (b) of the Bihar Pension Rules vide his letter dated 14.09.2012. A show cause notice was issued to the petitioner on 31.10.2013 with a direction to the petitioner to show cause as to why his salary for the suspension period be not withheld. The petitioner filed his reply on 02.12.2013 enclosing the relevant exhibits showing his innocence. The petitioner also tried to convince the authority concerned about the delay caused in departmental proceeding and also his financial position due to the



pending departmental proceeding and he has requested the authority concerned to conclude the departmental proceeding immediately and to pay the salary and allowance for the period of suspension. The respondent authorities issued a resolution, as contained in Memo No.689 dated 28.01.2014 issued under the signature of Special Secretary to the Government, Department of Home (Palice), Government of Bihar, Patna, whereby a decision was taken to withhold the 5% pension of the petitioner under the provisions of Rule 43 (b) of the Bihar Pension Rules and it was also intimated that nothing would be paid except subsistence allowance for the period of suspension.

6. The petitioner aggrieved the action of the respondents had filed a review petition/appeal for reconsideration of the decision taken vide Memo No.689 dated 28.01.2014 and the same was rejected vide letter no.5623 dated 08.07.2014 on the frivolous grounds. Learned counsel for the petitioner submits that the punishment order passed by the respondent authorities are also in teeth of the CCA Rules, 2005 and also against the golden rule of interdepartmental proceeding. In the departmental proceeding the petitioner has been wrongly punished. The Conducting Officer once exonerated him from all the charges, the disciplinary authority without following the due process of law punished the



petitioner. Learned counsel for the petitioner submits that the impugned order of punishment dated 28.01.2024 would show that firstly the same has not been furnished any reason for inflicting punishment of the petitioner which had taken place in the present case and secondly there is no finding of any grave misconduct as against the petitioner or of having a cause pecuniary loss to the Govt. on account of the said misconduct so as the warrant inflicted upon punishment in terms of Rule 43(b) of Bihar Pension Rules, 1950. Learned counsel for the petitioner has relied upon the order dated 21.06.2018 passed in **CWJC No.18055 of 2010, Kumar Ajit Singh Vs. The State of Bihar & Ors.** by which the Writ Court has held that the provisions of Rule 43(b) of Bihar Pension Rules, 1950 to the effect that for inflicting punishment under Rule 43(b) of the Bihar Pension Rules it is necessary to come to a conclusion of grave misconduct on the part of the petitioner or pecuniary loss having been caused to the Govt. on account of the misdeeds of the petitioner. The respondent-State aggrieved by the order of **CWJC No.18055 of 2010, Kumar Ajit Singh Vs. The State of Bihar & Ors.(Supra)** has preferred an appeal bearing **LPA No.1682 of 2018, The State of Bihar & Ors Vs. Kumar Ajit Singh** and the same was dismissed vide order dated 06.02.2023 affirmed the order of the Writ Court as aforesaid.



7. Learned counsel for the State submits that there was a complain that the police became a brutal during the said raid and because the action of the police many villagers were forced to leave the village. The petitioner was charged with not maintaining not good governance during the said raid and he had been suspended. Later on a departmental proceeding was initiated against the petitioner in which the punishment of withholding 5% of pension was awarded by the competent authority in accordance with law and there is no infirmity in the proceeding as well as in the impugned order of the State Authority, the petitioner has been awarded punishment in accordance with Rule as prescribed under Rule 43(b) of the Bihar Pension Rule and the petitioner was superannuated from the post in question w.e.f. 31.07.2012 so the proceeding was converted under Rule 43(b) of the Bihar Pension Rule and after giving the due opportunity to the petitioner and following the process of law as well the principles of natural justice, the aforesaid punishment has been awarded to the petitioner.

8. Having heard the parties and upon going through the material on the record, I am view of that the impugned order of punishment dated 28.01.2014 suffers from the total non-application of mind and does not furnish any reason as to why the



inflicted punishment on the petitioner and the same is not complied under the provisions of Rule 43(b) of the Bihar Pension Rule,1950 to the effect that the inflicted punishment under Rule 43(b) of the Bihar Pension Rules it is necessary to come to a conclusion of grave misconduct on the part of the petitioner or pecuniary loss having been caused to the Govt. on account of the misdeeds to the petitioner but it appears from the present case that there is no such findings, hence the order of punishment dated 28.01.2014 (Annexure-16) and order dated 08.07.2014 (Annexure-17) are set aside.

9. The respondent authorities are 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 order taking into consideration that the petitioner had already been retired from the service w.e.f. 31.07.2012 and the petitioner is also entitled to get salary for the period of suspension.

10. This writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.05.2024.
Transmission Date	NA

