

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10328 of 2011

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Sita Ram Singh, son of Raghunath Singh, Resident of village- Sikki Khurd,
P.O. Sikki Kala, District-Palamau (Jharkhand).

... .. Petitioner

Versus

1. The State Of Bihar.
2. The Director General Of Police Govt. Of Bihar, Patna
3. The Inspector General Of Police Railway Govt. Of Bihar, Patna
4. The Deputy Inspector General Of Police Railway Govt. Of Bihar, Patna
5. The Deputy Inspector General Of Police Human Rights , Govt. Of Bihar,
Patna
6. The Superintendent Of Police Railway Muzaffarpur
7. The Dy. Superintendent Of Police Railway Muzaffarpur
8. The Inspector Of Police-Cum-Conducting Officer Sonpur

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Nilesh Sinha, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 29-11-2024

In the instant petition, petitioner has prayed for the
following reliefs:

*“1. That this is an application for
issuance of appropriate writ(s), order(s), direction
for the quashing of the order as contained in Memo
No. 1584, dated 06.08.2005 issued by the
Superintendent of Police Railway, Muzaffarpur
whereby and whereunder petitioner has been
dismissed from the post of Constable (Munshi) in
G.R.P. Muzaffarpur.*



And further for the quashing of the Memo No. 727, dated 09.05.2008 issued by the Deputy Inspector General of Police Human Rights, Govt. of Bihar, Patna whereby and whereunder the appeal filed by the petitioner has been rejected on the ground of being devoid of the merit.

And also for the quashing of the Memo No. 264/P-2, dated 24.01.2011 passed by the Director General of Police, Govt. of Bihar, Patna whereby and whereunder appeal memorial filed by the petitioner has been rejected on the ground of being devoid of the merit.

And after quashing of the abovesaid orders direct the respondents may be directed to reinstate the petitioner w.e.f. the date of his dismissal with all consequential benefits.”

2. The petitioner was appointed as a Constable, Government Railway Police (GRP) on 28.03.1984. On 14.10.1999, Police officials raided premises followed by complaint relating to 29.5 Kgs of Charas and 10 Kgs of Ganja, which were found from a barrack alleged to have been in possession of the petitioner. Arising out of the aforementioned



incident, petitioner was subjected to parallel proceedings like disciplinary / criminal. Charge Memo was issued on 17.11.1999 in a departmental inquiry. Whereas, on 08.09.2004, petitioner was acquitted in Excise Case No. 42 of 1999 / 53 of 2003 on the file of the 5th Additional Sessions Judge, East Champaran. The same was appraised to the department.

3. The petitioner was arrested on 16.10.1999 and he was in custody till the date of his acquittal i.e. on 08.09.2004.

4. Learned counsel for the petitioner, on instruction, submitted that in the departmental inquiry, 07 witnesses have been cited as witnesses and they have adduced evidence. Except one witness Dipak Sah, stated to be a Cook, was permitted to be examined and cross-examined by the petitioner insofar as remaining 06 witnesses, petitioner has not been provided an opportunity to have his say on the evidence adduced by the six witnesses and also not permitted petitioner to cross-examine such of those six witnesses. This has not been disputed by the learned counsel for the State-Respondents.

5. In all fairness, the disciplinary authority should have waited for personal appearance of the petitioner during the entire departmental proceedings. It was beyond the control of the petitioner to appear in a departmental inquiry during the



intervening period from 16.10.1999 to 08.09.2004, admittedly, he was under custody. On this score, the petitioner has made out a *prima facie* case for interfere with the impugned order of dismissal dated 06.08.2005 (Annexure-1) and Appellate Authority order dated 09.05.2008 (Annexure-2) and order dated 22.02.2011 (Annexure-3). Accordingly, they are set aside.

6. In the light of Hon'ble Supreme Court decision in the case of ***ECIL vs. B. Karunakaran*** reported in (1993) 4 SCC 727 and ***Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors.*** reported in (2011) 5 SCC 142.

Paragraphs 46 to 50 reads as under:-

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately, i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.



47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam v. Presiding Officer, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.*

48. In *ECIL v. B. Karunakar*, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view



by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh , Akola Taluka Education Society v. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale.

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

7. And further reiterated in case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736**.

8. The overall principle laid down in the aforementioned cases are that in the event of Court setting aside the dismissal order or appellate authority's order in a departmental inquiry on technical ground and if the charges are serious in such circumstances, matter is required to be remanded to the disciplinary authority to conclude departmental inquiry within stipulated period of time. Further, it was observed that



from the date of dismissal till fresh inquiry is concluded either he should be placed under suspension or he should be taken back to duty. In the present case having regard to the fact that petitioner would have attained age of superannuation and retired from service, if he was in service on 30.06.2024, therefore, question of reinstating him would not arise. However, petitioner is entitled to subsistence allowance during the intervening period from 16.10.1999 to till 30.06.2024, the date on which he retired. In this regard, subsistence allowance is required to be paid by the appointing authority/disciplinary authority for the reasons that he would be deemed to be under suspension in view of setting aside the order of dismissal read with the appellate authority order.

9. The concerned disciplinary authority is hereby directed to commence the inquiry from the defective stage and conclude the same within the period of six months from the date of receipt of this order. The petitioner shall cooperate in the disciplinary proceedings without fail.

10. On conclusion of the departmental inquiry, the concerned authority is hereby directed to regulate the deemed suspension from 16.10.1999 to 30.06.2024 whether it is required to be treated as leave with pay or leave without pay in the light



of relevant provision under the Bihar Service Code. Such order shall be passed by the competent authority within a period of four months from the date of conclusion of the departmental inquiry.

11. Disciplinary authority is hereby directed to invoke relevant provision for exoneration or for imposition of any of the penalty in a continued inquiry proceedings in view of the fact that petitioner has attained age of superannuation and retired from service on 30.06.2024. In this regard, he has to invoke Bihar Pension Rules or any other Pension Rules, which are applicable to Government Railway Police personnel. The above exercise shall be completed in terms of the observation made.

12. Accordingly, the present C.W.J.C. No. 10328 of 2011 stands allowed in part.

(P. B. Bajanthri, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.12.2024
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