

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7533 of 2023

Vijay Kumar, Son of Shubhuk Lal Yadav, Resident of Village-Adavari,
Maheshkhut, Chautham, P.S.-Chautham, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Police Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Deputy Secretary, Home (Police) Department, Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police (Headquarter), Bihar, Patna.
6. The Deputy Inspector General of Police (Personnel) Bihar, Patna.
7. The Inspector General of Police, Darbhanga Range, Darbhanga.
8. The Inspector General of Police, Modernization, Bihar, Patna-cum-Enquiry Authority.
9. The Superintendent of Police, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mr. Bindhyachal Singh, Sr. Advocate. Mr. Vinay Ranjan, Advocate.
For the Respondent/s	:	Mr.Md. Nadim Seraj, GP-5. Mr. Shailesh Kumar, AC to GP-5.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-12-2024

Heard Mr. Bindhyachal Singh, learned senior counsel along with Mr. Vinay Ranjan, learned counsel appearing on behalf of the petitioner and Mr. Md. Nadim Seraj, learned GP-5 along with Mr. Shailesh Kumar, learned AC to GP-5 for the State.

2. The petitioner in paragraph no. 1 of the present



writ petition has sought, *inter alia*, following relief(s), which is reproduced hereinafter:-

(i) That this is an application for issuance of a Writ in the nature of certiorari to quash the Resolution as contained in Memo No. 10819 dated 26.10.2022 issued under the signature of Deputy Secretary, Home (Police) Department, Government of Bihar, Patna whereby and where under the punishment of censure (Nindan) (w.e.f. allegation year) and withholding the two increment with non cumulative effect has been inflicted upon the petitioner and further for quashing the resolution as contained in Memo No3253 dated 7.3.2023 issued under the signature of same very officer i.e., Deputy Secretary, Home Police Department, Bihar, Patna whereby and where under departmental appeal/ review petition of the petitioner has been rejected on erroneous grounds as well as on wrong facts which has been communicated to the Commandant, Bihar Special Armed Police (hereinafter referred as BSAP) Headquarter, Patna vide letter no.794 dated 16.3.2023 and subsequently same has been communicated to the petitioner by the Commandant, BSAP-9, Jamalpur vide memo no.37 dated 22.03.2023 and further directing the respondent authorities to issue integrity certificate of the petitioner and further for issuance of any other appropriate writ/ writs, order/orders it may deem fit and proper by this Hon'ble Court.

Relief stated in Para-1 of I.A. No. 01/2024,02/2024 and 03/2024 has been added vide order dated 02/12/2024.

(ii) That this Interlocutory application is being filed for addition in the prayer portion that to grant promotion to the petitioner w.e.f. 01/12/2020 and further for pass any appropriate order or orders it may deem fit and proper.

(iii) That this Interlocutory application is being filed for addition in the prayer portion to quash the inquiry report of the Inquiry Officer to the extent of finding/opinion with respect to Charge No. 1 and 2 as same is perverse.

(iv) That this Interlocutory application is being filed for addition in the prayer portion for also quashing memorandum of charge as contained in memo no. 6551 dated 9.8.2019 along with resolution as contained in memo no. 1072 dated 5.2.2021 issued under the signature of Additional Secretary, Home (Police) Department, Govt. of Bihar without approval of competent authority i.e. Hon'ble Governor, Bihar.”

3. The matter was heard at length and after examining the records relating to the disciplinary action taken



against the petitioner, Mr. Nadim Seraj, learned counsel appearing on behalf of the State informs that proper approval was taken at the level of the State Government and in view of the order dated 26.11.2024, there is no infirmity in the conduct of the disciplinary proceeding in the case of the petitioner. Learned counsel further referring to sub clause (i) and (iv) of the Explanation-2 of Rule 14 of the Bihar CCA Rules, 2005 submits that such government servant shall be deemed to be fit for promotion from the due date after expiry of the period of the adverse effect of penalty.

4. At this stage, Mr. Bindhyachal Singh, learned senior counsel along with Mr. Vinay Ranjan, learned counsel appearing on behalf of the petitioner submits that the petitioner has been unnecessarily subjected to disciplinary action and the penalty of 'censure' was awarded to the petitioner by which adverse remark has been entered into the character roll of the petitioner which lasts for five years and, therefore, the petitioner's entitlement for promotion from the due date has been affected which calls for interference of this Court.

5. Having considered the rival submissions made on behalf of the parties, as well as, the fact that this Court has meticulously taken notice of the charge memo, as well as, the



manner in which the inquiry was conducted against the petitioner for seven charges and after proper inquiry, the inquiry officer has suggested minor penalty of 'censure' to be awarded to the petitioner. Second show cause was issued to the petitioner and the disciplinary authority without interfering with the inquiry in any manner and rejecting the show cause of the petitioner has imposed the penalty of 'censure' and 'withholding of two increments without cumulative effect' upon the petitioner.

6. I appreciate Mr. Nadim Seraj, learned counsel appearing on behalf of the State who has taken notice, particularly, sub clause (i) and (iv) of the Explanation-2 of Rule 14 of the Bihar CCA Rules, 2005, which are reproduced hereinafter:

14. Minor and Major Penalties.

Explanation (2). (i)Censure. - *'The Censure shall be entered in the character roll of the year the allegation or omission & commission. The adverse effect of censure on the confirmation and promotion of concerned Government Servant shall be for next three consecutive years after the year of allegation or omission & commission for which he or she is censured. For example, if a Government Servant is censured for the allegation or omission & commission of the year 2002-2003, it shall be entered in the character roll of 2002-2003 and its adverse effect shall be from the year 2003-2004 to 2005-2006.*

Such Government Servant who has been awarded with three censures, shall be deemed to be fit for promotion only if after expiry of the period of adverse effect of last (third)



censure, during the next five years his work and conduct of at least three years is extraordinary and has not been awarded any adverse remarks for the period of next five years. For example, if the adverse effect of third censure of a Government servant expires in 2002 and his promotion is due in 2008 or before that, in that case his promotion shall be deemed to be due in 2008, i.e. five years after the expiry of adverse effects of last censure, with the condition that during the five years of 2003 to 2007 his work and conduct of at least three years is extraordinary and during the said' five years he has not been awarded any adverse remarks.

iv)Withholding of increments of pay without cumulative effect. - Such penalty shall be effective from the date of issue of order; i.e. the increments due after the issue of the order shall be withheld. It will be essential to mention clearly the number of annual increments withheld in the order by the disciplinary authority. After the communication of order of penalty the increment shall remain withheld from the due date of next increment. For example, if two increments of a Government Servant are withheld without cumulative effect, it will mean that after the date of communication of order of penalty, from the due date of next increment till one year the first increment and from the second due date till one year the second increment shall remain withheld. As the penalty is without cumulative effect, the salary from the due date of third increment after the withholding of increments shall be paid with increment after adding the stages of both the withheld increments, but the financial benefit of withheld period shall not be admissible.

No promotion shall be considered during the period of operation of this penalty, i.e. for the number of years the increments are withheld. Only after the expiry of the period of penalty, it will be possible to consider on the promotion from the due date.”

7. In view of the fact that petitioner has suffered already two increments, he becomes entitled for being promoted after expiry of the penalty and the adverse effect will amount to lose its force making the petitioner entitled for being considered for promotion by the Departmental Promotion Committee



(DPC) soon so that the petitioner may not further demoralize, as junior to him have been promoted.

8. The writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.12.2024
Transmission Date	NA

