

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7496 of 2023

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Avinash Chandra son of Surendra Kumar Jha, Resident of Village-Bakhri,
P.S.-Bakhri, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Tirhut Range, Muzaffarpur.
4. The Additional Director General of Police (Budget & Appeal), Bihar, Patna.
5. The Inspector General of Police (Excise & Prohibition Wing), Bihar, Patna.
6. The Senior Superintendent of Police, Muzaffarpur.
7. The Enquiry Officer-cum-Superintendent of Police, Sitamarhi.

... .. Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Vinay Ranjan, Advocate Mr. Abhisekh Teerthankar, Advocate
For the State	:	Mr. P. K. Verma (AAG- 3) Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 22-03-2024

The present writ petition has been filed for quashing the order dated 07.10.2021, passed by the Inspector General of Police, Tirhut Range, Muzaffarpur, as communicated vide order dated 21.10.2021, issued by the Senior Superintendent of Police, Muzaffarpur whereby and whereunder the petitioner has been inflicted with the punishment of stoppage of increment of salary for



next one year with non-cumulative effect. The petitioner has also prayed for quashing of the order dated 08.09.2022, passed by the Director General of Police, Bihar Patna whereby and whereunder the punishment inflicted upon the petitioner vide order dated 07.10.2021 has been revised, in purported exercise of power conferred under Rule 853A(a) of the Bihar Police Manual and the punishment of compulsory retirement has been inflicted upon the petitioner. The petitioner has also prayed for reinstatement in service with all consequential benefits.

2. Shorn of unnecessary details, it would suffice to state that the petitioner was placed under suspension, vide order dated 26.11.2020, on the allegation that he had failed to arrest a person, who was engaging in illicit trade of liquor, whereafter a departmental proceeding was initiated against the petitioner and a memo of charge dated 04.12.2020 was served upon him. The enquiry officer had then submitted an enquiry report dated 05.04.2021, exonerating the



petitioner from all the charges levelled against him. Nonetheless, the disciplinary authority did not find the said enquiry report dated 05.04.2021 to be palatable, hence directed the Superintendent of Police, Sitamarhi to re-conduct the departmental enquiry, in light of the enquiry report, submitted by the Deputy Superintendent of Police, Excise and Prohibition, vide letter dated 10.11.2020. Thereafter, a de-novo enquiry was initiated and a new enquiry officer was appointed, who had then submitted a second enquiry report dated 03.09.2021 holding the petitioner to be guilty of the charges levelled against him. Thereafter, the Inspector General of Police, Tirhut Range, Muzaffarpur had issued a second show-cause notice dated 16.09.2021 and then the impugned order of punishment dated 07.10.2021 was passed, inflicting punishment of stoppage of increment of salary for next one year with non-cumulative effect. The petitioner had then preferred an appeal against the said order dated 07.10.2021, however, till date no decision has



been taken. Nonetheless, during the interregnum period, a show-cause notice dated 21.06.2022 was issued to the petitioner, calling upon him to show-cause as to why the punishment inflicted upon him, vide order dated 07.10.2021, be not enhanced, to which the petitioner had submitted his detailed representation and then the impugned order of punishment dated 08.09.2022, inflicting the punishment of compulsory retirement upon the petitioner, has been passed.

3. The learned counsel for the petitioner has submitted that the decision to initiate a de-novo enquiry, vide order dated 16.07.2021 and that too with a direction to be conducted in terms of the enquiry report dated 10.11.2020, submitted by the Dy. Superintendent of Police, Excise & Prohibition is perverse and illegal, inasmuch as no reason has been assigned therein so as to necessitate discarding of the 1st enquiry report dt. 5.4.2021 as also warrant initiation of de-novo enquiry. It is submitted that it is a well settled law that in case the disciplinary authority is permitted to hold de-



novo enquiry, merely because the earlier report was not palatable to it, it may amount to vesting of un-canalized and arbitrary powers in a disciplinary authority to continue with the departmental proceeding till such time a report to his satisfaction is received. In this connection, the Ld. counsel for the petitioner has referred to a judgment dated 16.04.2021, passed by this Court in CWJC No.7247 of 2018 **(Ajit Kumar Sinha vs. the State of Bihar & Ors)**.

4. The learned counsel for the petitioner has further submitted that even the show-cause notice dated 21.06.2022, issued to the petitioner, asking him to show-cause as to why the punishment inflicted vide order dated 07.10.2021 be not enhanced, does not contain any reasons which might have weighed in the mind of the Director General of Police, Patna to differ with the findings of the disciplinary authority so as to warrant enhancement of punishment inflicted upon the petitioner by the Inspector General of Police, Tirhut Range, resulting in not only breach of the



principles of natural justice, but also violation of the provisions contained under Article 311 (2) of the Constitution of India. It is next contended that this Court, by a judgment dated 08.01.2024, passed in CWJC No. 14339 of 2022 (**Anjani Kumar Singh vs. the State of Bihar & Ors.**) has held, in view of the provisions contained in Rule 28 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as “the Rules, 2005”) that penalty imposed by the disciplinary authority can be revised only within six months of the date of passing of the same, however, in the present case, the order of punishment dated 7.10.2021, has been revised by an order dated 08.09.2022, passed by the Director General of Police, Bihar Patna, after a lapse of about one year, which is not permissible in the eyes of law, hence, on this ground as well the impugned order dated 08.09.2022, passed by the Director General of Police, Bihar, Patna is fit to be set aside. In this connection, the learned counsel for the petitioner



has also referred to a judgment rendered by a co-ordinate Bench of this Court dated 06.01.2021, passed in CWJC No. 7906 of 2020 (**Ananjay Singh @ Ananjay Kumar Singh vs. the State of Bihar & ors**), reported in **2021 (1) PLJR 473**, as also the one rendered by a co-ordinate Bench of this Court dated 06.11.2023 passed in CWJC No. 25445 of 2019 (**Md. Giaaul Hak vs. the State of Bihar & Ors.**).

5. The learned counsel for the petitioner has next contended that the impugned order dated 08.09.2022, passed by the Director General of Police, Bihar, Patna, enhancing the punishment inflicted by the disciplinary authority, vide order dt. 7.10.2022, is not only cryptic but also an unreasoned order, depicting non-application of mind, inasmuch as the same does not deal with the reply submitted by the petitioner to the show-cause notice dated 21.06.2022 as also does not furnish any reason to have taken a divergent view i.e. other than the one taken by the disciplinary authority in its order dated 07.10.2021, apart from



no clear, cogent and succinct reasons having been furnished therein so as to warrant enhancement of punishment already inflicted upon the petitioner vide order dated 07.10.2021. It is a trite law that furnishing of clear, cogent and succinct reasons in support of the impugned order is an indispensable component of a decision-making process. The Ld. counsel for the petitioner has referred to a judgment rendered by this Court dt. 21.09.2023, passed in CWJC No.17189 of 2015 (***Abha Kumari vs. The State of Bihar & Ors.***) as also the one dated 05.01.2024, passed in CWJC No. 16616 of 2021 (***Sunil Kumar vs. the State of Bihar & Ors.***). Reference has also been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Oryx Fisheries Pvt. Ltd. vs. Union of India***, reported in **(2010) 13 SCC 427**.

6. Per contra, the learned counsel for the respondent-State has submitted that there has been no procedural irregularities in conduct of the departmental proceedings, hence, this Court would not sit in appeal and re-appreciate the evidence,



thus the writ petition is fit to be dismissed. It is also submitted that Rule 853 A(a) of the Bihar Police Manual does not prescribe any time limit for enhancing the punishment and as far as Rule 28 of the Rules, 2005 is concerned, the same is not applicable, hence the impugned order dated 08.09.2022, passed by the Director General of Police, Bihar, Patna, cannot be sated to have been passed beyond the period of limitation.

7. I have heard the learned counsel for the parties and perused the materials on record. As far as the order dated 08.09.2022, passed by the Director General of Police, Bihar, Patna, enhancing the punishment inflicted vide order dated 07.10.2022, passed by the Inspector General of Police, Tirhut Range, Muzaffarpur, is concerned, firstly, this Court finds that the same has been passed after a lapse of almost one year of passing of the order of punishment dated 07.10.2021 by the disciplinary authority, hence, considering the law laid down by this Court in the cases of **Anjani Kumar Singh** (supra), **Ananjay Singh** (supra)



and **Md. Giaul Hak** (supra), this Court would hold that since Rule 28 of the Rules, 2005 would govern the field, the Director General of Police, Patna could have revised the punishment inflicted upon the petitioner by the disciplinary authority vide order dt. 07.10.2021, only within a period of six months of passing of the same, however, admittedly, in the present case, the punishment, inflicted by the disciplinary authority, has been revised by the Director General of Police, Bihar vide order dt. 8.09.2022, after almost one year, which is not permissible in the eyes of law, hence the order dt. 08.09.2022, passed by the Director General of Police, Bihar, Patna, being contrary to law is set aside.

8. Yet another aspect of the matter is that the impugned order dated 08.09.2022, passed by the Director General of Police, Bihar Patna is cryptic and an unreasoned order, which nowhere deals with the submissions made by the petitioner in his reply to the show-cause notice dated 21.06.2022 and on the contrary, in a single line, it has been



stated that nothing new has been submitted by the petitioner, apart from the fact that the said order dated 08.09.2022 does not specify anywhere, the reasons which might have weighed in the mind of the Director General of Police, Bihar, to take a different view from the view taken by the disciplinary authority while inflicting minor punishment vide order dated 07.10.2021, so as to warrant enhancement of the punishment. Reference in this connection be had to the judgments rendered by this Court in the cases of **Sunil Kumar** (supra) and **Abha Kumari** (supra), as also to the judgment rendered by the Hon'ble Apex Court in the case of **Oryx Fisheries Pvt. Ltd.**(supra). Consequently, on the foregoing ground as well, the order dated 08.09.2022, passed by the Director General of Police, Bihar, Patna is held to be perverse, illegal and contrary to law.

9. This Court finds that since a long time has passed and the result of the appeal filed by the petitioner has not yet fructified, no useful purpose



would be served by directing the Appellate authority to deal with the Appeal filed by the petitioner, especially in view of the categorical assertion made by the learned counsel for the petitioner to the effect that the petitioner no longer wishes to press the appeal in question and the petitioner would be satisfied in case the order of punishment dated 07.10.2021, passed by the Inspector General of Police, Tirhut Range, Muzaffarpur is directed to be restored. It is directed, accordingly.

10. As a result of quashing of the order dated 08.09.2022, passed by the Director General of Police, Bihar, Patna, as aforesaid, the order of punishment dated 07.10.2021, passed by the Inspector General of Police, Tirhut Range, Muzaffapur stands revived. Consequently, the petitioner is directed to be reinstated back in service, nonetheless, as far as the issue of back wages is concerned, this Court finds that since the disciplinary proceedings, right from the stage subsequent to submission of the 1st enquiry report



dated 05.04.2021, especially subsequent to passing of the order of punishment dated 07.10.2021 by the Inspector General of Police, Tirhut Range, Muzaffarpur, has been attended with mala-fides and since the action of the concerned respondents reek of a design to somehow enhance the punishment & inflict punishment of compulsory retirement upon the petitioner, this Court deems it fit and proper to direct the respondents to grant 100% back wages to the petitioner along with other consequential benefits, as are admissible.

11. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.04.2024
Transmission Date	NA

