

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 16616 of 2021

Sunil Kumar Son of Shri Gaya Prasad Resident of Kutubchak, P.O.-Pakri,
P.S.-Kawakol, District-Nawada, Pin Code-805124

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Home (Police) Department, Bihar, Patna.
2. Director General of Police, Patna.
3. Additional Director General of Police, Law and Order, Bihar, Patna.
4. Inspector General of Police, Central Range, Bihar, Patna.
5. Deputy Inspector General of Police, Central Range, Bihar, Patna.
6. Senior Superintendent of Police, Patna.

... .. Respondents

Appearance:

For the Petitioner	:	Mr. Abhinav Srivastava, Adv. Mr. Pushkar Bharadwaj, Adv. Mr. Arpit Anand, Adv.
For the State	:	Mr. Sheo Shankar Prasad, SC-8 Ms. Ruchikar Jha, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 05-01-2024

The present writ petition has been filed for quashing the order of punishment of dismissal from service dated 02.06.2020, passed by the Inspector General of Police, Central Range, Patna, i.e. the Respondent No. 4, as also the appellate order dated 09.10.2020, passed by the Additional Director General of Police, Law and Order, Bihar, Patna, i.e. the Respondent No. 3, whereby the appeal filed by the petitioner has been rejected. The petitioner has also assailed the order dated 04.08.2021, passed



by the Under Secretary, Home Department (Police Branch), Bihar, Patna, whereby and whereunder the review / memorial petition filed by the petitioner has been rejected.

2. The brief facts of the case according to the petitioner are that the petitioner was appointed as Sub-Inspector of Police, Bihar Police and was posted at various places, however, while he was posted as Sub-Inspector of Police at Beur Police Station, a letter dated 03.02.2017 was issued from the office of the Deputy Inspector General of Police, Central Range, Patna, by which the Superintendent of Police, Patna, was informed regarding illegal manufacturing and illicit trade of liquor being carried out within the jurisdiction of Beur Police Station, Patna, hence, it was directed to take necessary steps. The City Superintendent of Police, West, Patna, had then conducted an enquiry and submitted a report dated 13.02.2017, wherein the complicity of the then SHO, Beur Police Station, namely, Dharendra Kr. Pandey, Sub-Inspector of Police, Vishwambhar Prasad, Sub-Inspector of Police, Surendra Singh and Sub-Inspector of Police, Vijay Kumar Singh, was found, however, in the concluding paragraph, it was observed that the Sub-Inspector of police, Shrawan Kumar, as also the OD Officer i.e. Sub-Inspector of Police, Sunil Kumar (the petitioner herein) are



also having complicity in the alleged illicit trade of liquor.

3. Thereafter, a charge-sheet dated 09.05.2017 was served upon the petitioner by the Senior Superintendent of Police, Patna, inter alia, alleging therein that in the area falling within the jurisdiction of the Beur Police Station, illicit trade of liquor was being carried out, in which the petitioner and others are having complicity. The Enquiry Officer had then conducted enquiry and submitted an enquiry report dated 15.05.2017, finding the petitioner guilty of the charges levelled against him, whereafter the Deputy Inspector General of Police, Central Range, Patna, had inflicted punishment of dismissal from service upon the petitioner, vide order dated 06.06.2017.

4. The petitioner had then challenged the aforesaid order dated 06.06.2017 by filing an appeal, however, the same was dismissed by an order dated 05.11.2017, passed by the Inspector General of Police, Patna Range, Patna. The petitioner had then filed a review petition before the Director General of Police, Bihar, Patna, which was allowed vide order dated 12.11.2018, on the ground that Rule 17 and 18 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (herein after referred to as the “Rules, 2005”) had not been complied with while conducting the departmental proceeding in



question and the order of punishment of dismissal of the petitioner from service was set aside as also the petitioner was directed to be reinstated in service.

5. The disciplinary authority had then issued a fresh charge-sheet dated 28.03.2019 qua the petitioner herein, inter alia, alleging therein that illicit liquor was being manufactured and illicit trade thereof was being carried out in the jurisdiction of Beur Police Station, hence, the officers / police personnel posted there were having complicity in the said illegal manufacturing and illicit trade of liquor. The Enquiry Officer had conducted the enquiry and submitted his enquiry report dated 17.08.2019, finding the charges levelled against the petitioner to have been proved, whereafter, a second show cause notice dt. 22.04.2020 was served upon the petitioner, to which the petitioner had submitted his wholesome reply and then the order of punishment of dismissal from service dated 02.06.2020 was passed by the Respondent No. 4. The petitioner had then challenged the aforesaid order dated 02.06.2020 by filing an appeal, however, the same was dismissed by an order dated 09.10.2020, passed by the Respondent No. 3. The petitioner was constrained to prefer a review / memorial before the Director General of Police, Bihar, Patna, however, the same has also



stood dismissed by an order dated 04.08.2021. This is how the petitioner is before this Court.

6. The learned counsel for the petitioner has submitted, by referring to the enquiry report dated 13.02.2017, submitted by the City Superintendent of Police, West, Patna that the entire report would show that the allegations are directed towards the then SHO, Beur Police Station, namely Dhirendra Kumar Pandey, the then Sub-Inspector of Police, Surendra Singh, the then Sub-Inspector of Police, Vijay Kumar Singh and the then Sub-Inspector of Police, Shrawan Kumar, however, the witness i.e. the Chaukidar of the area, namely, Shyam Dev Paswan, has though narrated about the complicity of the other police personnel, however, he has not named the petitioner. It is also submitted that in the last paragraph of the aforesaid report dated 13.02.2017, abruptly it has been merely stated that the petitioner is also having complicity in the matter of taking money from the owner of a liquor laden tractor and releasing the tractor in the night of 28.01.2017-29.01.2017.

7. The learned counsel for the petitioner has further submitted, by referring to the enquiry report dated 17.08.2019 that though four witnesses were examined during the course of the conduct of the departmental proceeding, however, none of



them have stated about the complicity of the petitioner and they have merely recognized and certified the signature made on various documents, thus, it is submitted that neither there is any evidence nor any reason has been furnished in the enquiry report dated 17.08.2019, so as to come to a finding that the charges levelled against the petitioner have stood proved. Therefore, it is the submission of the learned counsel for the petitioner that the enquiry report dated 17.08.2019 would depict that there is neither oral nor documentary evidence to prove the guilt of the petitioner in the alleged occurrence and mere tendering of documents do not prove the contents thereof, hence, it is submitted that the entire enquiry proceedings are non-est in the eyes of law and the present case is a case of no evidence. In this connection, the learned counsel for the petitioner has relied upon the following judgments:-

- (i). **AIR 1985 SC 1121 (Anil Kumar vs. Presiding Officer & Ors.)**
- (ii). **2000 (3) PLJR 10 (Kumar Upendra Singh Parimar vs. B.S. Co-opt. Land Development Bank Ltd. & ors.)**
- (iii). **(2009) 2 SCC 570 (Roop Singh Negi vs. Punjab National Bank & Ors.)**
- (iv). **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**



**(v). Judgment dated 05.4.2023, passed in CWJC
No. 14324/2013 (Miran Pd. Yadav vs. The State
of Bihar & Ors.)**

8. The learned counsel for the petitioner has further submitted that the impugned order of punishment dated 02.06.2020, passed by the Respondent No. 4, is not only perverse, but also smacks of non-application of mind by the disciplinary authority and a total non-consideration of the issues raised by the petitioner apart from the same being merely a narration of events, hence, the same is fit to be set aside, more so, since the same is not supported by any reason or evidence so as to warrant infliction of punishment upon the petitioner. In this regard, the learned counsel for the petitioner has relied on a judgment dated 21.09.2023, rendered by this Court in CWJC No. 17189 of 2015 (*Smt. Abha Kumari vs. The State of Bihar & Ors.*), paragraphs no. 4, 5 and 7 to 9 whereof are reproduced herein below:-

“4. The learned counsel for the petitioner has further submitted that the impugned order dated 30.6.2015, passed by the Respondent No. 3, would show that the same is mere narration of facts and has neither dealt with the defence put forth by the petitioner nor mentions instances of irregularities, alleged to have been committed by the petitioner and the proof thereof, hence,



the same is also based on no evidence, apart from being a cryptic order, not depicting proper application of mind, inasmuch as no cogent or succinct reason have been furnished for inflicting punishment upon the petitioner, which is an indispensable part of a decision making process. In this regard, the learned counsel for the petitioner has referred to a judgment, rendered by a coordinate Bench of this Court in the case of Janeshwar Sinha vs. State of Bihar and Others, reported in 2022 (1) PLJR 169, paragraphs no. 5 to 9 whereof are reproduced herein below:-

“5. Learned counsel for the petitioner submits that the disciplinary authority was exercising quasi-judicial power. Therefore, he was bound to mention the defence raised by the petitioner in his show cause which would have been material for consideration before the authority and thereafter by a reasoned order he should have rejected the same. In absence of any reason, the impugned order suffers from non-application of mind and arbitrariness, as such is not sustainable in law.

6. The State has filed detailed counter affidavit controverting the claim of the petitioner, however does not dispute that the impugned order does not disclose the defence of the petitioner or reason for non- acceptance of the same.

7. In ***Roop Singh Negi v. Punjab National Bank***, reported in (2009) 2 SCC 570, relied upon by learned counsel for the petitioner, the Hon'ble Supreme Court said that “Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to



arrive at a finding upon taking into consideration the materials brought on record by the parties.”
“Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned.”

8. Evidently in the case on hand, the disciplinary authority has not assigned any reason for awarding the punishment against the petitioner. Hence the impugned order is hereby quashed. There is no need for further remand of this matter, as sufficient injustice has been done with the petitioner who retired in the year 2001.

9. Hence authorities are directed to make payment of entire retiral dues including entire salary for the period of suspension minus already paid amount. The Suspension period was in between 08.03.1999 to 30.11.2000. If any recovery has been made from the petitioner in pursuance of the impugned order that would also be refunded to the petitioner.”

5. The learned counsel for the petitioner has referred to yet another judgment, rendered by a coordinate Bench of this Court in the case of ***Dr. Kamla Singh vs. State of Bihar & Others***, reported in 2023 (1) PLJR 803, paragraph no. 7 whereof is reproduced herein below:-

“7. So far as second contention of the petitioner is concerned, the same has substance. From perusal of the order of punishment, it is evident that the Disciplinary Authority, without taking into consideration or discussing show cause reply of the petitioner, has mechanically passed the impugned order. The impugned order does not contain any discussion as to how the petitioner's reply to the second show cause notice was not acceptable to the disciplinary authority referring to the points taken



therein. In this case, order of punishment does not disclose the application of mind. As per Rule 19 of the Bihar CCA Rules, 2005, it is incumbent upon the authorities concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. Reference is made to the decision of the Division Bench of this Court in case of ***Dr. Rabindra Nath Singh vs. The State of Bihar and Others***, reported in 1983PLJR 92.”

7. I have heard the learned counsel for the parties and perused the materials on record. It is evident from the records, as narrated by the learned counsel for the petitioner and recorded hereinabove in the preceding paragraphs that the present case is a case of no evidence. This Court further finds that the impugned order dated 30.6.2015 is not only cryptic but also an unreasoned order, depicting complete non-application of mind inasmuch as the same has not taken into account the defence put forth by the petitioner, apart from no clear, cogent and succinct reasons, having been furnished by the Respondent No. 3, for coming to a decision warranting infliction of punishment upon the petitioner. 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. Reference, in this connection, be had 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) 13SCC 427.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I deem it



fit & proper to quash the impugned order dated 30.6.2015 as also preclude the respondent authorities from proceeding any further in the matter, inasmuch as the petitioner has already been harassed to bits on account of hanging of sword over her head since the year, 2010 apart from sufficient injustice being meted out to the petitioner.

9. The writ petition stands allowed.”

9. The learned counsel for the petitioner, on same and similar grounds, has also assailed the appellate order dated 09.10.2020, passed by the Respondent No. 3 and the order dated 04.08.2021, passed by the Under Secretary, Home Department (Police Branch), Bihar, Patna, on the review / memorial filed by the petitioner. Consequently, it is argued that the punishment order, the appellate order and the revisional order, passed by the Respondent authorities, being not based on any evidence as also not depicting any reason for inflicting the punishment of dismissal from service, are fit to be set aside.

10. Last but not the least, it has been pointed out by the Ld. Counsel for the petitioner that the main accused in the entire incident / conspiracy i.e. the then SHO, Beur Police Station, Dhirendra Kumar Pandey, who along with his private driver, namely, Jitendra Kumar, are stated to have engaged in illicit trade of liquor, has stood exonerated, by an order dated



07.08.2019, passed by the Superintendent of Police, Rural, Patna, hence, it is contended that the petitioner has been discriminated with and varying standards have been adopted by the Respondents, while inflicting punishment upon the petitioner.

11. Per contra, the learned counsel for the respondents has though not been able to show that any non-formal witnesses have been examined or for that matter any documentary evidence of much worth has been led so as to conclusively prove the guilt of the petitioner, during the course of the departmental inquiry, but it is submitted that there is no procedural error in conduct of the disciplinary proceeding, which has been conducted as per the provisions contained in the Rules, 2005, hence this court would not sit in appeal and re-appreciate the evidence, thus there is no merit in the present writ petition and the same is fit to be dismissed.

12. I have heard the learned counsel for the parties and perused the materials on record. A bare reading of the initial inquiry report dated 13.02.2017, submitted by the City Superintendent of Police, West, Patna, does not show that there is any evidence against the petitioner to prove his guilt, however, this Court finds from the aforesaid report dated



13.02.2017 that the then SHO, Beur Police Station, namely, Dhirendra Kumar Pandey and his private driver, namely, Jitendra Kumar, were the main kingpin, who were engaging in illicit trade of liquor. This Court also finds from the aforesaid report dated 13.02.2017 that the evidence, adduced by the village Chaukidar, namely, Shyam Dev Paswan does not indict the petitioner. As far as the enquiry report, submitted by the Enquiry Officer, dated 17.08.2019, is concerned, the same also does not contain any evidence either oral or documentary against the petitioner viz-a-viz the charges levelled against him, thus the present case is a case of no evidence, hence the enquiry proceedings including the enquiry report dated 17.08.2019, being non-est in the eyes of law, stand vitiated, thus the enquiry report dated 17.08.2019 is quashed, especially in view of the law laid down by the Hon'ble Apex Court in the case of **Roop Singh Negi** (supra), **Kuldeep Singh** (supra) and **Saroj Kumar Sinha** (supra). Consequently, the impugned order of punishment dated 02.06.2020, passed by the Respondent No. 4, has got no legs to stand, nonetheless, it may be stated that the same is not only perverse but also smacks of non-application of mind by the disciplinary authority and a total non-consideration of the issues raised by the petitioner apart from the same being not supported



by any reason or evidence so as to warrant infliction of punishment of dismissal from service upon the petitioner, thus, is quashed. It is a trite law that since an order passed by the disciplinary authority has civil consequences, appropriate reasons are required to be assigned and moreover, a decision must be arrived at on the basis of some evidences, which are legally admissible. Reference, in this connection, be had to a judgment, rendered by this Court in the case of ***Smt. Abha Kumari*** (supra).

13. This Court further finds that since the views, expressed by the disciplinary authority in its order of punishment dated 02.06.2020, have been mechanically endorsed by the appellate authority as also by the revisional authority, apart from the fact that the order of punishment dated 02.06.2020, passed by the Respondent No. 4 has already been quashed by this Court, the appellate order dated 09.10.2020, passed by the Respondent No. 3, as also the revisional order dated 04.08.2021, passed by the Under Secretary, Home Department (Police Branch), Bihar, Patna, have also got no legs to stand, hence, are also set aside.

14. Now coming to the issue of back wages, this Court finds that since the disciplinary proceedings have been attended with malafides and since the actions of the disciplinary authority reek



of a design to somehow inflict punishment of dismissal upon the petitioner, this Court deems it fit and appropriate to grant 100% back wages to the petitioner herein along with other consequential benefits as is admissible to the petitioner, in view of the law laid down by the Hon’ble Apex Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.*, reported in (2013) 10 SCC 324.

15. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2024
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