

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1736 of 2021

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Braj Nandan Singh @ Brijnandan Singh, Son of Late Kedar Singh, Resident of Village- Bhuinya Toli, P.O. and P.S.- Namkum, District- Ranchi, at present residing at Village- Khaira (Mahsoni), P.O.- Kajra, P.S.- Piri Bazar, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Director General of Police, Bihar, Patna.
3. The D.I.G. of Police, Darbhanga Range, Darbhanga.
4. The Superintendent of Police, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Advocate
For the Respondent/s	:	Mr. Shailesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 07-01-2025

Heard Mr. Ram Hriday Prasad, learned Advocate for the petitioner and Mr. Shailesh Kumar, learned Advocate for the State.

2. The petitioner is aggrieved with the order dated 31.12.2008 passed by the Superintendent of Police, Samastipur whereby the petitioner has been inflicted with the punishment of dismissal. The petitioner also assailed the order of the Deputy Inspector General of Police, Darbhanga Range, Darbhanga dated 17.09.2013 whereby the appeal of the petitioner has been rejected by affirming the earlier order of dismissal. Aggrieved with the afore-noted orders the petitioner also preferred



memorial before the Director General of Police, which also came to be rejected on 20.11.2014, the copy of which is marked as Annexure 9 to the writ petition.

3. Dissatisfied with the orders, the petitioner approached this Court in CWJC No. 1392 of 2015, which came to be disposed of by a Bench order dated 02.07.2018 with a liberty to the petitioner to submit his comprehensive representation before the DGP, Bihar by way of fresh memorial, with categorical observation that earlier disposal of the memorial under order dated 20.11.2014 shall not stand in the way of concerned respondent. In terms of the aforesaid liberty, the petitioner filed a fresh memorial, which again resulted in rejection vide order dated 04.09.2018.

4. The petitioner on being found, the order dated 04.09.2018, has passed, leaving aside various relevant materials and by ignoring the mandate and observation of the Hon'ble Court filed a review petition, which also came to be rejected on 08.03.2019 only on account of the memorial having already been rejected, hence further review of such order is said to be not maintainable.

5. Having approached all the authorities and lost from all the places, the petitioner once again approached this Court



challenging all the afore-noted orders. It is the contention of the petitioner that he was appointed as a constable in the District of Samastipur. While he was deputed as a bodyguard of Dy.S.P. Anjal Indivar, he took 12 days casual leave and two days permission leave from 10.05.2003. During the leave, the petitioner diagnosed with progressive insomnia, depression and mental disorder. So he was primarily referred to Dr. Satyendra Kumar on 20.05.2003. However, on being found acute mental disorder, the petitioner was referred to mental hospital, Ranchi for proper treatment on 30.06.2003.

6. The petitioner was kept under treatment for a pretty long time and on 07.05.2013 he was declared fit to discharge his duty. The petitioner on being declared physically fit by the treating doctor, approached the controlling authority. However, he has been informed that he had already been dismissed from service. The petitioner obtained the dismissal order and preferred appeal before the concerned appellate authority and thereafter memorial and review, but did not find any succor.

7. Mr. Ram Hriday Prasad, learned Advocate for the petitioner has drawn the attention of this Court to Annexure 11 to the writ petition and contended that the petitioner filed a detailed memorial before the Director General of Police, Bihar,



Patna on 11.07.2018 stating all the facts and the grounds in details in the light of the order of this Court in CWJC No. 1392 of 2015; but, without considering any of the submission of the petitioner, the Director General of Police, Bihar, Patna has rejected the memorial by stating only therein that since the charges have been found proved, therefore the memorial stands rejected, ignoring all the relevant materials, which compelled the petitioner to file review.

8. It is further contended that the order impugned rejecting the review application depicts no application of mind and has been passed, only on the ground that earlier the memorial has already been rejected and thus there is no question to maintain the review application.

9. On the other hand learned Advocate for the State submits that since the petitioner has remained on unauthorized absence/leave for more than a decade, which led to a departmental enquiry, resulting into dismissal of the petitioner. The order of dismissal has also been affirmed by the appellate authority as well as by the Director General of Police, who has rejected the memorial. There is no infirmities in the departmental proceeding which led to dismissal and its affirmance by the higher authorities.



10. This Court has heard the learned Advocate for the respective parties and perused the materials available on record.

11. Before parting with the case it would be worthy to encapsulate the order passed by this Court in the earlier round of litigation in CWJC No. 1392 of 2015, especially, para 7 thereof :-

“7. The only issue which remains for consideration is whether the petitioner, in view of the lesser punishment given to others, who he alleges are similarly situated delinquent employees by the authorities, the petitioner would also be entitled to the similar treatment regarding the quantum of punishment having regard to his continuous mental illness. Learned counsel for the petitioner submits that from bare perusal of the appellate order dated 17.9.2013 (Annexure 7), passed by the D.I.G. of Police, Darbhanga as well as the order passed by the D.G.P. while disposing of the memorial under order dated 20.11.2014 (Annexure 8) it is apparent that they have not considered this aspect of the matter.”

12. It was this submission, which led the Court to extend the liberty to the petitioner to submit comprehensive representation by way of memorial so as to reiterate his submission in this respect regarding parity in punishment keeping in view the gravity of allegation with reference to mitigating circumstances of illness.



13. Now coming to the order dated 04.09.2018 passed by the DGP, Bihar, in pursuant to the order of this Court, as afore-noted, it is rather unfortunate that there is not at all any discussion to the submissions referred by the petitioner regarding parity in punishment, inflicted to the similarly situated delinquent employees facing similar charges of unauthorized absence on account of illness/mental illness. The respondent authorities while passing the impugned order(s), either on the memorial or review, completely left this aspect regarding parity in punishment keeping in view the gravity of allegation, with reference to the mitigating circumstances of illness.

14. This Court has also seen the application of the petitioner as contained in Annexure 11 *qua* the impugned order dated 04.09.2018 as well as 08.03.2019, there is neither any discussion nor paid any heed to such aspect of matter, thus in complete disregard to the order of this Court, making the impugned order vulnerable, suffers from vice of perversity and non-application of mind.

15. In view thereof, this Court left with no option but to set aside the order dated 08.03.2019 and relegate the matter afresh to the respondent no. 2 to consider the case of the petitioner *de novo* in the letter and spirit of the order dated



02.07.2018 passed in CWJC No. 1392 of 2015, especially para 7 and 8 thereof.

16. It is expected the concerned respondent shall pass reasoned and speaking order in the light of the afore-noted discussion preferably within a period of eight weeks from the date of receipt and production of a copy of this order.

17. The writ petition is allowed to the extent indicated, hereinabove.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.01.2025
Transmission Date	NA

