

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.900 of 2024
In
Civil Writ Jurisdiction Case No.5640 of 2021

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1. The State of Bihar through Addl. Chief Secretary, Government of Bihar, Patna.
 2. The Additional Chief Secretary Cum Principal Secretary, Department of Home (Police), Government of Bihar, Patna
 3. The Special Secretary, Department of Home (Police), Government of Bihar, Patna.
 4. The Additional Secretery, Home Police Department, Government of Bihar, Patna.
 5. The Director General of Police, Bihar, Patna.
 6. The Additional Director General of Police, Railway, Bihar, Patna.
 7. The Inspector General of Police, Headquarter , Bihar, Patna.
 8. The Inspector General of Police, Central Range, Patna.
 9. The Superintendent of Police Nalanda, Bihar.

... .. Appellant/s

Versus

Md. Muttafique Ahmad, Son of Md. Nabijan, Resident of Flat No. 401 B, Nizam Plaza, Samanpura Patna- 800014.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, AG Mr. Nadim Seraj, GP- 5
For the Respondent/s	:	Mr. Abhinav Srivastava, Sr. Advocate Mr. Shubham Priyadarshi, Advocate Mr. Pushkar Bharadwaj, Advocate Ms. Shreyanshi Raj, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 30-01-2025

Heard the learned Advocate General for the
appellants and Mr. Abhinav Srivastava, learned Senior
Advocate for the respondent.



2. The respondent, a Deputy Superintendent of Police, who was posted at Hilsa during the year 2019 was inflicted with a major punishment of withholding of three incremental benefits with cumulative effect and further withholding of promotion for three years.

3. He had challenged the aforementioned decision contained in Memo No. 6982 dated 06.10.2020 as also the order contained in Memo No. 8466 dated 11.12.2020, issued by the Special Secretary, Department of Home (Police Department), Government of Bihar dismissing his review application against the punishment order *vide* C.W.J.C. No. 5640 of 2021.

4. A learned Single Judge of this Court *vide* his judgment dated 20.06.2024 sustained the challenge and the order of punishment as also the order declining to review the judgment were set aside. The respondent was directed to be restored to his post with all financial and consequential benefits, if any, within a period of four weeks from the date of passing of the judgment.



5. The State has come up in appeal against the aforementioned judgment of the learned Single Judge.

6. The facts which would be necessary for adjudication of this appeal are only being stated here.

7. While the respondent was posted as Sub-Divisional Police Officer, Hilsa, the case *vide* Nagarnausa P.S. Case No. 77 of 2019 was registered for offences punishable under Sections 366A/34 of the Indian Penal Code, 1860 for kidnapping of a victim. The case was lodged by her father against five members of the same family. The respondent, in his capacity as SDPO, had supervised the case and had directed for arrest of all the accused persons. Three accused persons were, therefore, arrested on the supervision note of the respondent.

8. The records further reveal that the Superintendent of Police, Nalanda had given his supervision report-2 in which he had found that only one of the arrested accused persons, *viz.*, Dharmendra Ravidas was required to be arrested and proceeded



against, but definitely not his parents, who too, as noted above, were arrested on the supervision note of the respondent. This supervision note-2 by the Superintendent of Police, Nalanda kick-started a departmental proceeding against the respondent. The respondent was suspended and was communicated the charge and was asked to give his reply.

9. The explanation was furnished by the respondent which was found to be unsatisfactory and a decision was taken to initiate departmental proceeding against the petitioner.

10. One Additional S.P., Nalanda was appointed as the Presenting Officer. It was contended by the respondent that on the date fixed for hearing, the respondent had given a point-wise reply to the charges levelled against him.

11. On 19.03.2020 the S.P., Nalanda was examined but the Presenting Officer was absent and the case of the department was pleaded by the Inquiry Officer



himself. The respondent had prepared questions for cross-examining S.P., Nalanda, but the same was not permitted and the opportunity of cross-examining him also was not given to the respondent. Thereafter, the respondent was given a second show-cause notice to which also he had replied, but the punishment order was passed. The review also stood dismissed.

12. The learned Single Judge, while referring to Rule 17(11) and 17(14) of the ***Bihar Government Servants (Classification, Control & Appeal) Rules, 2005*** found that in the inquiry proceedings, such Rules were blatantly violated.

13. The learned Single Judge had taken note of the fact that because of the active part played by the respondent, the investigation proceeded in the right direction and the victim girl was recovered. However, since the incident of kidnapping and the arrest had led to some communal violence in the locality, the respondent was made the scapegoat, notwithstanding the fact that he



had carefully supervised the case.

14. An exception was taken by the learned Single Judge regarding the Inquiry Officer acting as a Presenting Officer in the departmental proceeding by taking reference of the judgment of the Supreme Court in ***State of U.P. & Ors. v. Saroj Kumar Sinha : (2010) 2 SCC 772.***

15. The charges against the respondent were flimsy, viz., that the respondent had not visited the place of occurrence while supervising the case; that a wrong statement was made by him that he had visited the P.O. along with the I.O. of the case and that because of his carelessness, innocent persons were arrested.

16. On perusal of the charges and the evidence collected during the departmental proceeding, it was concluded by the learned Single Judge that the charge could not be substantiated as the Inquiry Officer's report took into account extraneous matters relating to examination of three witnesses and non-examination of



other villagers which was not the subject matter of adjudication by the Inquiry Officer.

17. The respondent had visited the P.O. along with the S.H.O., but had only inadvertently stated about the I.O. In fact, the I.O. had gone to Chennai in connection with the aforementioned case and it was at the instance of the respondent that the I.O. had stayed at Chennai and had effected the arrest which led to the case being solved.

18. One of the charges against the respondent was that he wrote the supervision note after a delay of sixteen days of the lodging of the case. This was also not considered to be an infraction, serious enough under the Police Manual to attract a major punishment.

19. The records reveal that the persons who were arrested were the parents of the main accused and without their connivance, the offence would not have been committed. It was only because of such arrests that the recovery of the minor girl took place. That could not



have been construed as an offence for which the appellant was departmentally proceeded against

20. An I.O. has to follow the directions of the Supervisory Officer and respondent, in his capacity as the Supervising Officer in his judgment thought it best to direct for the arrest of the near relatives of the main accused. It ought not to have incurred any action against him.

21. A delay of sixteen days in filing the supervision note could not be attributed only to the lackadaisical working of the respondent but to the delay in investigation of the case. Merely because of an inadvertent error in referring to the S.H.O. as the I.O. of the case, the respondent has committed at best a venial mistake which would not even warrant a departmental proceeding against him, much less his being found guilty and being punished.

22. In a departmental proceeding, a Court exercising its powers under Article 226 of the Constitution



need not act as a second Court of first appeal and venture to re-appreciate the evidence but he could definitely enter into the thickets of facts and oversee whether the inquiry was held by a competent authority; in accordance with the procedure prescribed and whether there were any violation of principles of natural justice in conducting the proceedings.

23. If the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations and the conclusion on the very face of it is arbitrary and capricious and the findings are based on no evidence, the Court could certainly enter into the arena and take the remedial steps.

24. This would not amount to any re-appreciation of evidence or entering into the question of adequacy of reliability of evidence. (Refer to ***Union of India & Ors. v. P. Gunasekaran, (2015) 2 SCC 610***).

25. We are constrained to say that the



charges were flimsy and even though they were found to have been proved, in our opinion, those could not be substantiated.

26. The judgment by the learned Single Judge has dealt with all the charges and the incorrectness of the conclusion in great detail. The misconduct of a police officer for attracting punishment has been enunciated clearly by the Supreme Court in ***Inspector Prem Chand v. Govt. of NCT of Delhi & Ors. 2007 (4) SCC 566.***

In the aforementioned judgment reference has been made to the judgment in ***Union of India v. J. Ahmed, (1979) 2 SCC 286*** which indicates that a conduct would be blameworthy only in the context of the Conduct Rules and if it is stated to be a misconduct. Misconduct means action arising from ill-motive. Acts of negligence or an error of judgment or innocent mistake would not constitute any misconduct.

27. We are of the considered opinion that the action of the respondent was not even worthy of his being



put to a departmental proceeding.

28. We, therefore, put our imprimatur to the judgment by the learned Single Judge quashing the order of punishment and the order declining to review the aforenoted saddling of major punishment on the appellant.

29. The appeal has no merits and is thus dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sauravkrsinha/
Krishna-

AFR/NAFR	NAFR
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