

(2012) 01 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 7410 of 2007

Arbind Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 364(A)

Citation : (2012) 2 PLJR 843

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Chittaranjan Sinha and Binodanand Mishra, for the Appellant; Anjani Kumar and Sunil Kumar for the State, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. At the relevant time, petitioner was posted as Constable with the Motihari District Police. He has filed this writ petition questioning the dismissal order, bearing Memo No. 529/P-2 dated 31.1.2006, Annexure-A-7 passed by the Director General-cum-Inspector General of Police, Bihar, Patna, in exercise of power under Rule 853A of the Bihar Police Manual, 1978, as the punishment imposed on him by the Superintendent of Police, East Champaran, Motihari under Memo No. 1947 dated 21.7.2003, Annexure-2 has been found to be inadequate by the Director General-cum-Inspector General of Police. It appears petitioner was departmentally proceeded under departmental proceeding no. 58 of 2002 for his complicity in Raxaul P.S. Case No. 20 of 2002 dated 13.2.2002 registered for the offence under Sections 364(A), 120B/34 of the Penal Code for abduction of Ajay Kumar in which the personal telephone of the petitioner installed at his Chapra home was found to have been used for demanding ransom. During investigation of the said case, it was also found that Ajay Kumar was confined at the house of the petitioner for few days. During investigation it further transpired that petitioner had intimate relationship with non-F.I.R. accused of Raxaul P.S. Case

No. 20 of 2002 Madan Rai who was also accused in several other cases. In the light of the aforesaid material and other material including extra-judicial confession of non-F.I.R. accused Sunil Kumar Rai petitioner was proceeded against departmentally and punishment order dated 21.7.2003 was passed and the three increments of the petitioner was withheld, which is equivalent to three black marks.

2. The D.I.G., Champaran Range was not satisfied with the quantum of punishment imposed on the petitioner and invoking his power under Rule 853A forwarded the departmental proceeding file of the petitioner to the D.G.-cum-I.G. for enhancing the punishment imposed on the petitioner under his recommendation dated 7.1.2005.

3. The D.G.-cum-I.G., Bihar, Patna having received the proposal to enhance the punishment of the petitioner examined the departmental proceeding file of the petitioner and issued notice bearing Memo No. 2925 dated 4.7.2005, Annexure-A-6 asking the petitioner to show cause as to why punishment imposed on him under the order dated 21.7.2003 be not further enhanced by dismissing him.

4. In response to notice dated 4.7.2005 Annexure-A-6 petitioner submitted his reply dated 26.8.2005, which is contained in Annexure-12 to I.A. No. 45 of 2011. Perusal of reply dated 26.8.2005, Annexure-12 indicates that petitioner questioned the manner in which departmental proceeding was conducted as also the delay in issue of notice for enhancement of the punishment.

5. The D.G.-cum-I.G. having considered the show cause reply dated 26.8.2005 passed the impugned order dated 31.1.2006 dismissing the petitioner from service. Perusal of order dated 31.1.2006 Annexure-A-7 indicate that the D.G.-cum-I.G. while enhancing the punishment of the petitioner relied on the statement of the non-F.I.R. accused of Raxaul P.S. Case No. 20 of 2002 namely, Sunil Kumar Rai who disclosed his complicity and further indicated that Madan Rai and petitioner were his associate in the crime for which aforesaid Raxaul P.S. Case No. 20 of 2002 was lodged in which charge-sheet was also submitted showing the petitioner as suspect. Relying on the aforesaid material D.G.-cum-I.G. directed for dismissal of the petitioner from service.

6. Learned counsel for the petitioner questioned the impugned order dated 31.1.2006 passed by the D.G.-cum-I.G. on the ground of delay of over two years as initial punishment order was passed on 21.7.2003 the superior authorities could not have reopened the matter after delay of more than two years by directing issue of notice dated 4.7.2005, Annexure-A-6. From perusal of the impugned order it does not appear that show cause reply of the petitioner dated 26.8.2005 was considered by the authorities. Learned counsel further submitted that reliance placed in the impugned order on the extra-judicial confession of Sunil Kumar Rai is contrary to the canons of natural justice as petitioner had no opportunity to cross-examine Sunil Kumar Rai who not only disclosed his own complicity in the crime but also disclosed about the complicity of the petitioner

and Madan Rai. From perusal of initial order of punishment dated 21.7.2003 it is quite evident that Officer-in-Charge of Raxaul P.S. Case No. 20 of 2002 and the Crime Reader of the office of the Superintendent of Police were examined in the proceeding to establish the materials collected against the petitioner during investigation of Raxaul P.S. Case No. 20 of 2002 but petitioner refused to cross-examine the two witnesses. The non-F.I.R. accused made their extra-judicial confession during investigation which was recorded in the case diary and the case diary was produced in the proceeding by the Officer-in-Charge, Raxaul P.S. Case No. 20 of 2002 and the Crime Reader of the Superintendent of Police but petitioner never indicated his desire to cross-examine the two witnesses examined in the proceeding. He also never requested the Enquiry Officer to produce the non-F.I.R. accused Sunil Kumar Rai, Madan Rai for their examination in the proceeding. Thus, the submission of the learned counsel for the petitioner that petitioner was not given any opportunity to cross-examine Sunil Kumar Rai, Madan Rai is of no consequence. Initial punishment order proceeds on the basis that petitioner has intimate relationship with non-F.I.R. accused Madan Rai, which order the petitioner gladly accepted but when punishment has been enhanced submission is being made on his behalf that he was not given opportunity to cross-examine either Sunil Kumar Rai or Madan Rai. Petitioner having not questioned his complicity in the crime of abduction in the initial punishment order, in my opinion, he is not well advised to question his complicity in the same crime when punishment has been enhanced. In any view of the matter, petitioner having been named by one of the co-accused as active participant in the occurrence and named as suspect in the charge-sheet (sic) not deserve to be retained in the police force. The other ground taken by the learned counsel for the petitioner that notice to enhance the punishment has been issued on 4.7.2005 after delay of about two years of the issue of the initial punishment order dated 21.7.2003, as such, on the ground of delay in enhancing punishment under order dated 31.1.2006, Annexure-A-7 to the counter affidavit be quashed does not deserve any consideration in view of the provision of Rule 853A of the Police Manual which, itself provides that steps for enhancing the punishment may be taken within a reasonable time from the date of final order in the departmental proceeding. In the instant case, initial punishment order was passed on 21.7.2003, recommendation to enhance the punishment was made by the D.I.G., Champaran Range on 7.1.2005 on the basis of which notice dated 4.7.2005, Annexure-A-6 was issued in response where to petitioner submitted his reply dated 26.8.2005 whereafter order enhancing the punishment was issued on 31.1.2006, Annexure-A-7. It is thus apparent that enhancement order dated 31.1.2006 was issued within reasonable time of the initial punishment order dated 21.7.2003. The submission made on behalf of the petitioner that his show cause reply was not considered in the impugned order is also incorrect as the show cause of the petitioner was considered in the light of the materials in the departmental proceeding file, which is evident from penultimate paragraph of the impugned order. For the reasons indicated above, I do not find any merit in the writ petition, which is, accordingly, dismissed.