

(2023) 05 PAT CK 0079

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13239 Of 2019??????

Arvind Kumar @ Constable

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 05-05-2023

Acts Referred:

Citation : (2023) 05 PAT CK 0079

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Y.V. Giri, Rohit Kumar, Manish Kumar No.-13, Priti Kumari, Ajay Kumar?

Judgement

1. Heard Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Rohit Kumar, learned counsel for the petitioner and Mr. Ajay Kumar, learned AC to GP-4 for the State.

2. On the request of the parties, this writ application has been taken up for consideration.

3. In the present case, the petitioner is seeking quashing of the order as contained in Memo No. 583 dated 31.12.2018 issued under signature of Deputy Inspector General of Police (Railways) contained in Annexure '10' by which the departmental appeal preferred by the petitioner against the final order of dismissal from Bihar Police as contained in Memo No. 744 dated 12.07.2018 (Annexure '8') issued under signature of Superintendent of Rail Police, Jamalpur has been rejected. The petitioner further prays for setting aside of the inquiry report contained in Memo No. 48 dated 17.01.2017 (Annexure '3'). He is also seeking quashing of the Charge Memo No. 104 dated 21.01.2017 (Annexure '4') as well as the Final Order of dismissal contained in Memo No. 744 dated 12.07.2018 (Annexure '8').

Brief Facts of the Case

4. It appears that vide a charge memo contained in Memo No. 104 dated 21.01.2017, the petitioner was proceeded against in a disciplinary proceeding. The charge memo reads as under:-

5. In the disciplinary proceeding, ultimately vide Memo No. 744 dated 12.07.2018 (Annexure '8' to the writ application), the petitioner was dismissed from service.

6. The petitioner preferred an appeal but the same has also been dismissed vide order contained in Memo No. 583 dated 31.12.2018 (Annexure '10') whereafter the petitioner filed a memorial before the Director General of Police which has been dismissed vide Memo No. 1194/451265 dated 24.12.2019 (Annexure '12' to the interlocutory application).

Submission of the Petitioner

7. While assailing the impugned orders, learned Senior Counsel for the petitioner submits that for identical charges Constable Rajpati Shekhar was also dismissed from service. He challenged his order of dismissal in this Court in CWJC No. 9512 of 2019. This Court having perused the entire records and taking note of the submissions of the parties held that not a single competent witness deposed in the inquiry and the facts forming part of the allegation against the petitioner in the Charge Memo could not be proved.

8. Learned Senior Counsel, therefore, submits that instead of taking this Court through the facts of the case, he would request that the identical case having been allowed by the learned Co-ordinate Bench of this Court, similar view be taken.

Submission of the State

9. Mr. Ajay Kumar, learned AC to GP-4 for the State has not disputed, rather he admits that in identical case, the learned Co-ordinate Bench has allowed the writ application and the orders passed in the disciplinary proceeding have been quashed.

Consideration

10. Having heard learned Senior Counsel for the petitioner and learned AC to GP-4 for the State as also on perusal of the records, this Court finds that the Constable Rajpati Shekhar was also served with a Memo of Charge dated 21.01.2017, he was dismissed from service and then his appeal was rejected by the competent authority.

11. The learned Co-ordinate Bench of this Court has recorded in paragraphs '11' to '13' of the judgment as under:-

"11. Shambhu Thathera and Yatish Kumar, however, have also not been examined in the proceedings. They were only two persons competent of deposing in respect of the occurrence alleged at the barrack. It is only these two persons

who were competent to state about the petitioner's presence, participation in demand and acceptance of illegal gratification, and subsequent release of the accused persons with the illicit consignment of liquor.

12. Reliance on the confessional statement of accused Shambhu Thathera, the allegations stated in the FIR, seizure of the alleged illegal gratification from Havildar Lalan Ram and statement of police officials/personnel in support of the factum of lodging of the FIR, recording of confessional statement of accused Shambhu Thathera, at best, are proof of the facts leading to lodging of the criminal case and not by any stretch of imagination sufficient to prove the occurrence as stated in the F.I.R. and bring home the charges against the petitioner even on preponderance of probability. The documents forming part of the criminal investigation relied upon by the Enquiry Officer cannot be considered to be material to sustain charges in the departmental proceedings. Law to this effect by now settled as per decision in case of Roop Singh Negi (supra) relied upon by the learned senior counsel for the petitioner.

13. The submission of the State counsel regarding procedure being followed and witnesses being examined, therefore, is clearly unsustainable. As noted above, not a single witness competent to depose in respect of any fact forming part of the allegation against the petitioner in the charge memo has been examined. All the witnesses, who have been examined, are, at best, witness to the lodging of the criminal case after the accused Shambhu Thathera had been apprehended in the Railway yard. The nine witnesses, who have been examined, are not witnesses to the events, prior to arrest of accused Shambhu Thathera, i.e. in the night of 26-12-2016 at the barrack or in the morning of 27-12-2016 when it is alleged that illegal gratification was demanded in presence of the petitioner, accepted and after accepting the illegal gratification the accused Shambhu Thathera and Yatish Kumar released along with consignment of illicit liquor. Even on preponderance of probability it cannot be concluded that based on depositions of these nine witnesses, or material forming part of the criminal investigation arising out of Kiul Rail P.S. Case No. 247 of 2016, the charges have been proved.
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12. This Court has also been informed that the judgment in the case of Rajpati Shekhar has not been appealed against and it has already been implemented.

13. Learned Senior Counsel for the petitioner as well as learned AC to GP-4 for the State have informed this Court that in case of this petitioner also neither Shambhu Thathera nor Yatish Kumar who are said to be the two competent witnesses deposed.

In the given circumstances, this case is found to be identically situated to that of Rajpati Shekhar, this Court sets aside the impugned orders and the disciplinary proceeding against the petitioner. The petitioner shall be reinstated in service with all consequential benefits.