
(2011) 12 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 856 of 1998

Deoki Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Police Act, 1949 — Section 7

Citation : (2013) 2 PLJR 131

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Ram Hriday Prasad, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.—Heard learned counsel for the petitioner and the State. The writ petition originally was filed for quashing of the order of punishment inflicted upon the petitioner by the Commandant B.M.P. 9 dated 4.10.94 as well as the order passed by the D.G.P. dated 16.11.1995 and the order passed on the memorial of the petitioner, by the Government dated 18.8.1997 which was communicated under Memo No. 11732 dated 22.12.1997.

2. The brief facts of the case necessary for disposal of the present writ application are as follows:--

3. The petitioner was initially appointed as a Constable in B.M.P.-9 at Jamalpur on 17.2.1972 and on 23.3.1993 he was issued charge-sheet with regard to acts of misconduct against him allegedly taking place on 9.3.1993 by which it was stated that he had abused various police officers in the family quarters under the influence of alcohol. The petitioner was also suspended. Thereafter a second charge-sheet was also issued on 17.5.1993 which also basically refers to the same sequence of events though some further details were also included in the same. As per the charge-sheet dated 23.3.1993, departmental proceeding No.

8/93 came into being whereas upon the charge-sheet dated 17.5.1993, departmental proceeding No. 14 of 1993 was initiated. The petitioner appeared in the enquiry and in the departmental proceeding No. 8/93 and the enquiry officer submitted his report holding the petitioner guilty of such charges. However, in the enquiry report of departmental proceeding No. 14 of 1993, the enquiry officer opined that the said proceedings should be stayed since in effect the charges were the same with the only difference being that more details of the same sequence of events have been included. The commandant B.M.P.-9 at Jamalpur finally by his order dated 4.10.94 passed final order in the departmental proceeding No. 8 of 1993 by which the petitioner was inflicted with the punishment of stoppage of increments for two years, being equivalent to three black marks. He was also given a last warning that if in future he indulges in such activity then he would be dismissed from service. It was further stipulated that the petitioner shall not be entitled to any payment for the suspension period except what had already been given to him.

4. The petitioner never challenged the same. However, it appears that the D.G.P. under memo No. 1334 dated 28.6.1995, which was routed through the Commandant B.M.P.-9 under Memo No. 2308/R.O. dated 6.7.1995, asked for a show cause from the petitioner on the point of dismissal. The said show cause is however, not on record but pursuant to the submission of the show cause by the petitioner the D.G.P. passed order dated 17.9.1995, as contained in memo no. 2138 dated 17.9.95, by which in departmental proceeding no. 14 of 1993 the petitioner was given punishment of being reverted to the post of constable in the initial scale of pay and it was further stipulated that he would be getting increments treating him to be a newly appointed constable. From the order passed on 17.9.1995 it is apparent that the same has been passed in the departmental proceeding no. 14 of 1993.

5. Learned counsel for the petitioner while assailing the order impugned has drawn the attention of this Court to Rule 824(e) of the Police Manual which deals with the description of departmental punishments and submits that the same can only be inflicted to the extent of forfeiture of last increment(s) or future increment(s). But by reverting back on the post of constable in the initial scale has amounted to forfeiture of his entire increment over a period of almost 24 years which according to him is impermissible. He has further relied upon Rule 832(a) of the Police Manual which stipulates that every order of withholding of increment or its reduction or forfeiture shall set forth the pecuniary penalty entailed thereby subject to a maximum of one month's pay as provided u/s 7 of the Police Act.

6. Learned counsel submits that the petitioner losing out on the increments earned over a period of 24 years is much more than the maximum limit of one month's pay and thus on this ground also the impugned order is unsustainable in law.

7. He therefore, submits that without there being any Appeal or memorial

preferred by the petitioner against the order dated 4.10.1994, the D.G.P. passed the impugned order which was not justified both on facts as well as in law because the same has been done after more than a year of passing of the order dated 4.10.94 and also the show cause having been issued after more than 8 months on 28.6.95. He also relies on Rule 853(A)(a) to submit that though the power is there with the D.G.P.-cum-Inspector General of Police to call for any file in any case and pass such order as he may deem fit, but it is subject to being done within a reasonable time from the date of final order in departmental proceeding. He relies upon the provision in view of the fact that the order has been passed after more than one year from the order dated 4.10.94 in departmental proceeding No. 8 of 1993 and more importantly he submits that the action could be taken only after the final order in departmental proceeding. He submits that in the present case by order dated 4.10.1994 in departmental proceeding no. 8 of 1993 further proceedings in departmental proceeding no. 14 of 1993 had been stayed and thus the D.G.P.-cum-Inspector General of Police could not have passed any order invoking this provision in departmental proceeding no. 14 of 1993, since the same has only been stayed and no final order has been passed in departmental proceeding no. 14 of 1993. He lastly submits that the appellate order is cryptic and non-speaking since the appeal is stated to have been rejected.

8. Learned counsel for the petitioner submits before this Court that it is his categorical stand that he is not aggrieved by the order dated 4.10.94 and thus in fact the petitioner has not challenged the same.

9. Learned counsel for the State on the other hand submits that the order impugned is in accordance with law and the jurisdiction conferred by Section 853(A) has rightly been invoked.

10. Considering the facts and circumstances of the case, this Court is inclined to accept the submissions made on behalf of the petitioner, mainly on the ground that the D.G.P.-cum-Inspector General of Police has misdirected himself in passing the order in departmental proceeding no. 14 of 1993, when the same had only been stayed and no final order had been passed.

11. As per Rule 853(A)(a) the D.G.P.-cum-Inspector General of Police has power to call for the file and pass such order that he may deem fit but only after the final order of the departmental proceeding. Since in the present case from both the order dated 4.10.94 as well as the order of the D.G.P. as contained in memo dated 17.9.1995, it is clear that the departmental proceeding no. 14 of 1993 has only been stayed without passing of any final order. Thus the D.G.P.-cum-Inspector General of Police passing the impugned order as contained in memo dated 17.9.1995 in departmental proceeding no. 14 of 1993 was neither competent nor had the jurisdiction to pass such order under the provisions of Rule 853(A)(a) of the Police Manual.

12. For the reasons aforesaid, on the short ground of lack of jurisdiction and

competency of the D.G.P.-cum-Inspector General of Police to pass the order impugned, this Court is left with no option but to quash the said order.

13. Accordingly, the order as contained in memo No. 2138 dated 17.9.1995 passed in departmental proceeding no. 14 of 1993 with regard to the petitioner stands quashed.

14. Consequently, the order passed by the Government on the memorial dated 11.8.1997 as communicated to the petitioner under memo no. 11732 dated 22.12.1997 also stands quashed. However, quashing of the said order shall not preclude the respondents from proceeding in accordance with law. The writ petition stands allowed to the extent indicated above.