
(1991) 07 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 217 of 1990

Madan Mohan Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Citation : (1991) 07 PAT CK 0004

Final Decision : Allowed

Judgement

Gopi Chand Bharuka, J.

The present writ application has been filed by the petitioner challenging the validity of the order dated 26-12-1989 passed by Inspector General of Police, Bhagalpur Range (Annexure-11) by which the punishment of the petitioner in a departmental proceeding has been enhanced from stoppage of increment for one year to his dismissal from service.

2. At the material time the petitioner was posted as. a Sub-Inspector of Police at Deogher. On 27-2-1989 one Dilip Singh, alleged to be a criminal, was arrested at Deogher. It is said that this arrest gave rise to some controversy in the local police administration. In order to resolve the controversy the respondent D.I.G. went to Deogher for making spot enquiry. It is further said that in course of enquiry some altercations took place between the petitioner and the D.I.G. and the petitioner in his excitement placed his cap, belt and revolver on the table. In this background the petitioner was put under suspension by order dated 28-2-1989 (Annexure-2) and thereafter he was submitted with charge-sheet (Annexure-3). In the departmental proceeding initiated against the petitioner after considering the report of the D.S.P., who was the Conducting Officer, the Superintendent of Police by order dated 30-6-1989 (Annexure-8) found the petitioner guilty of the charge that because of some annoyance or excitement the petitioner had thrown or kept the revolver on the table before the D.I.G. The Superintendent of Police has also taken into account that the. Deputy Commissioner, Deogher, who was an independent witness, had refused to give

evidence. It was also noticed that in 1988 the petitioner was illegally transferred by the respondent D.I.G. and since that order was cancelled by the Director General of Police, therefore, D.I.G. was annoyed with the petitioner. Keeping in view all these circumstances and the nature of the charge, the Superintendent of Police came to the conclusion that stoppage of one year's increment will be the sufficient punishment to the petitioner. No appeal was preferred against this order by the petitioner. It transpires that subsequently pursuant to the powers conferred on the I.G. Police under Rule 853-A of the Bihar Police Manual, he called for the file of the petitioner and after inviting the show cause from the petitioner, enhanced the punishment by ordering his dismissal. It is a matter of record that proceeding for enhancement of punishment was taken up by the I.G. pursuant to a recommendation in this regard made by the respondent D.I.G. against whom mala fide has been alleged by the petitioner and there are indications in this regard in the order of the S. P. as well.

3. After hearing Mr. Tara Kant Jha, learned Counsel appearing for the petitioner, and the counsel for the State I am of the opinion that on the facts and the circumstances of this case enhancement of punishment was uncalled for. The I.G. has nowhere found that the Superintendent of Police, who is the punishing authority had committed an error of record in drawing his conclusion in respect of the charge levelled against him. There is nothing to show that either any charge levelled against the delinquent was overlooked or any material evidence was not taken into account. Therefore, in such a situation the Inspector General of Police should not have invited its power of superintendence in order to enhance the punishment unless it could be demonstrated that the punishment awarded is grossly inadequate to the proven charge in the present case. To the contrary, keeping in view the facts of the case and the nature of the charge, the punishment of dismissal seems to be too harsh and disproportionate to the gravity of the misconduct in question.

4. In the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, , it has been held:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

5. In this view of the matter, I quash the order dated 26-12-1989 passed by the Inspector General of Police, respondent No. 4 (Annexure-11) and direct reinstatement of the petitioner. The petitioner will also be entitled to his back wages at permissible in law.

6. The writ application is allowed to the extent indicated above. There will be no order as to cost.