

(2016) 05 PAT CK 0112

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14876 of 2015

Ranjan Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Bihar Police Manual, 1978 — Rule 853 A
Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLJR 968

Hon'ble Judges : Smt. Anjana Mishra, J.

Bench : Single Bench

Advocate : Mr. Amit Prakash, Advocate, for the Petitioner; Mr. V.N.P. Sinha, Senior Advocate Mr. Vijay Anand, Advocate, for the EOU; Mr. Manoj Kumar Jha, A.C. to G.P.-26, for the State

Final Decision : Allowed

Judgement

Smt. Anjana Mishra, J.—The present writ application has been filed seeking a writ of certiorari for quashing memo No. 2290/L-1 dated 05.06.2015 whereby and where under the petitioner's show cause has been rejected and the punishment of compulsory retirement passed against the petitioner earlier vide Memo No. 5365 dated 28.11.13, issued by the Director General of Police, has been upheld, without affording the petitioner any personal hearing.

2. The brief facts necessary for providing the backdrop of the case are as follows:-

I. The petitioner was appoint as Sub Inspector of Police in the year 1989 after having worked as Sub-Inspector under the services of Home Guard since 04.09.1981, after facing the selection process for appointment of sub-Inspectors.

II. From the time he joined till the year 2005, i.e., till 14.09.2005, the petitioner had an unblemished service record and was rewarded several times for his distinguished service.

III. On 14.09.2005, the Range D.I.G. Champaran at Bettiah passed an order dated 14.09.2005 placing the petitioner under suspension with effect from 10.9.2005. The said suspension order was subsequently revoked on the recommendation made by the S.P., Bagaha on 10.11.2005, though the suspension order came to be withdrawn, the memo of charge and departmental proceeding against the petitioner were continued, and the petitioner was asked to show cause vide letter dated 14.09.2005 against charge memo dated 07.12.2005.

IV. In the aforementioned departmental proceeding, the relevant documents were not supplied to the petitioner, despite repeated demands by him and enquiry report dated 10.06.2007 was submitted against him with the recommendation that the punishment be given to the petitioner. The said inquiry report was placed on irrelevant material and mis-appreciation of the records.

V. Vide letter dated 10.08.2007, the Range D.I.G., Bettiah passed an order of dismissal against the petitioner on the basis of the Enquiry report submitted against the petitioner.

VI. The petitioner filed an appeal before Zonal I.G., Muzaffarpur who vide his order dated 22.10.2008, after hearing the parties allowed the petitioner's appeal and as a consequence thereof the petitioner was reinstated in service at Bagaha on 24.01.2009.

VII. In view of the fact that the petitioner's salary and promotion had not been granted to him, the petitioner represented for his due promotion as Inspector since many sub-Inspectors who were junior to the petitioner had been granted promotion during the period of dismissal of the petitioner whereas the petitioner had been denied the same. He also represented for payment of his salary for the period he remained out of service, which was duly forwarded by the S.P. and Range D.I.G.

VIII. However, when the matter reached the Directorate, the concerned authority, invoking the provisions of Rule 853-A of the Police Manual, purported to initiate action against the petitioner once again for placing him under compulsory retirement, thus reviewing the order of the appellate authority which had directed his reinstatement. By the aforementioned order dated 28.07.2011, it was further directed that the Range D.I.G. review the earlier order of exoneration.

IX. However, the concerned Range DIG on consideration of the Directorate order once again held that the petitioner's case was not fit for re-consideration under Rule 853-A of the Police Manual as it was beyond five years and because the petitioner was having a distinguished career.

X. Ignoring the aforementioned recommendation dated 11.04.2012, the Director General of Police called for the record of the departmental proceeding and issued a show cause notice calling for an explanation as to why the petitioner be not

compulsorily retired, even though the earlier records of the case shows that the case had been closed.

XI. Nevertheless, the petitioner submitted his representation on 09.01.2013, but without any rationale the DIG reopened the issue regarding the petitioner's dismissal only to create hindrances in the matter of promotion of the petitioner.

XII. Being aggrieved by the show cause notice dated 08.10.2012, the petitioner preferred C.W.J.C. No. 22712 of 2013 which was heard by this Hon'ble Court but during the pendency of the said writ application an order vide Memo No. 5365 passed on 28.11.2013 whereby the petitioner was placed under compulsory retirement. The said order passed by the Director General of Police was challenged by an interlocutory application. This Court after hearing the parties, passed an order dated 18.12.2014 setting aside the order of compulsory retirement and remanded the matter to the Director General of Police for passing an order afresh in accordance with law.

3. In pursuance of the order of remand and since the impugned order placing him under Compulsory Retirement dated 18.12.2014 (Annexure-10) was set aside, the petitioner then submitted his joining before the Director General of Police on 05.01.2015.

4. Even after receiving the above application, the petitioner was never allowed to join and only received a notice dated 02.02.2015 asking him to show cause in purported compliance of the order of the Hon'ble Court. The petitioner submitted his detailed show cause running into 19 pages on 04.03.2015, whereby he reiterated all the relevant facts which he has raised in the writ application.

5. Though the petitioner had clearly explained all facts and circumstances in his show cause, the petitioner was surprised, that without any personal hearing, and without any further intimation, he received Memo No. 2290/L-1 dated 05.06.2015, whereby it is communicated that his show-cause has been rejected and the punishment of compulsorily retirement stands (Annexure-13). Thus the present writ application.

6. Learned counsel for the petitioner submitted that the Rule 853A as envisaged under Bihar Police Manual has been invoked for imposing the order of punishment against the petitioner, beyond the period of four years. It is submitted, on behalf of the petitioner, that apart from being against the mandate of law the order as contained in Annexure-13 is in the teeth of the letter and spirit of the order passed by this Court and is also a non-speaking order. Thus, the impugned order being in violation of the settled principle of law, is but a nullity and is fit to be set aside.

7. Learned counsel for the petitioner contended that earlier vide Annexure-3, the appeal of the petitioner had been dealt in depth and the concerned authority, had come to the finding that the petitioner was not guilty and accordingly, the order of dismissal was withdrawn and he was reinstated in service. It was contended,

that thereafter, the petitioner represented for his salary which was duly granted to him. However, when the petitioner started representing for his promotion and the same was under consideration, the respondent Inspector General, invoking the provisions as contained in Rule 853A of the Bihar Police Manual, sought to re-open the issue after four years and issued notice calling for the petitioner to show cause as to why he be not placed under compulsory retirement. It was contended by learned counsel for the petitioner that the above action could be taken only within a "reasonable time" from the date of final order in the departmental proceeding. It was submitted that the final order in the case of the petitioner was passed in the year 2008 whereas the proceeding was sought to be reviewed in the year 2012 i.e., after a lapse of four years which was contrary to the mandate of law and against the meaning subscribed by this Court in several pronouncements.

8. In this context learned counsel has referred to a decision of this Court cited in 2001(1) PLJR 177 (Anjan Kumar Singh v. The State of Bihar and others) wherein it has been laid down as follows:-

"8. Sub-rule (a) of Rule 853A authorises the Inspector General of Police to call the file in any case even when no appeal lies and pass such order as he may deem fit. The above action, however, should be taken within a reasonable time from the date of final order in departmental proceeding. Sub-rule (b) of Rule 853A of the Manual talks about the power of the State Government to call for the proceedings in any disciplinary case even when no appeal or memorial lies and pass such order, as it may deem fit, whereas sub-rule (c) of Rule 853A of the Manual States that when an appeal has been filed and the Inspector General of Police on application of his mind thinks that he should enhance the punishment, he can dismiss the appeal, but must simultaneously mention in that order that as per powers given in Rule 853A (a) he has decided to review it for enhancement and take action for obtaining show cause etc. where it may deem necessary.

9. The power, which has been exercised in the given case by respondent no. 2 is not the power so envisaged under sub-rule (c) of Rule 853A of the Manual, because there was no appeal against the order of reinstatement and the Director General-cum-Inspector General of Police has neither enhanced the punishment nor has reduced the same, rather he has reviewed the order passed by the Deputy Inspector General of Police on appeal, whereby and where under the petitioner (delinquent) was directed to be reinstated. So far sub-rule (a) of Rule 853A is concerned, this power is exercisable by the Inspector General of Police even when no appeal lies and may pass such order as he may deem fit within a reasonable time from the date of final order in departmental proceeding. Here it would appear that an appeal was already filed by the petitioner before the Deputy Inspector General of Police against the order of dismissal under sub-rule (b) of Rules 851 of the Manual. It would further appear in this matter that the order of dismissal was set aside by the appellate authority and the petitioner was directed to be reinstated vide order, as contained in Annexure-11 dated

21.03.1997. Even assuming that the order passed by the appellate authority was reviewed in exercise of the power under Rule 853A (a) of the Manual, it could have been exercised within a reasonable period, but could not have been exercised in any manner beyond a period of more than three years. The provision as envisaged under Rule 853A of the Manual, in that view of the matter, is not applicable in the facts and circumstances of the case. "

9. Thus the phrase "reasonable period" as stated in the aforementioned rule has been confined to a period of three years by this Court in a similar situation. The same parameter was also followed by a Co-ordinate Bench of this Court in C.W.J.C 15174 of 2009 whereby this Court vide order dated 31.11.2009 has held "that the suo motu powers provided for in Rule 853A of the Bihar Police Manual for enhancement of punishment shall have to be read as a power to be exercised within reasonable time quantified by this Court as three years. In this case the power has been exercised beyond three years".

10. Having heard learned counsel for the petitioner and upon consideration of the submissions of the parties including the counter affidavits filed, it appears that after the matter was closed in the year 2008 and the petitioner was reinstated only after it had been established that the charges against the petitioner and that of SHO had been intermingled with each other in a mechanical manner. The SDPO had confirmed that the petitioner was not responsible for identifying or giving false identification of the criminals, rather it was done solely by the then SHO Shri Sachidanand Singh. This fact also stood confirmed by the report of the DIG Range, Bettiah. Such matters, having already been put to rest in the year 2008 after due enquiry and verification and also in appeal, the action of the Inspector General in issuing a fresh show cause notice after four years and proceeding to pass order against the petitioner, was also contrary to the Rule 853A. The argument advanced by the learned Senior Counsel appearing on behalf of the Economic offences that the concept "reasonable period" would also stretch to five years and depends on the facts of each case is, in my opinion, not worthy of acceptance, and thus, rejected.

11. Moreover, on perusal of the impugned order contained in Annexure-13, I find and hold, that the same is against the letter and spirit of order passed by this Court that while passing the impugned order as contained in Annexure-13, no satisfactory explanation has been offered as to why the matter is reopened after a period of four years. Thus, the order impugned is against the settled principles of law. Furthermore, the order impugned being passed without consideration of the show cause filed by the petitioner is also contrary to the principles of natural justice. It is also held that the impugned order being based on materials contrary to the records of the case, is wholly unconscionable and the punishment inflicted on the petitioner by way of compulsory retirement cannot be sustained and is fit to be set aside. Accordingly, the impugned order contained in Memo No. 2290/L-1 dated 05.06.2015 (Annexure-13) is quashed.

12. Thus, this writ petition is allowed.

13. The order of compulsory retirement passed against the petitioner is set aside and he is directed to be reinstated in service. The petitioner is thus also entitled to all consequential benefits as available to him in accordance with law.