

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10746 of 2019

Ishak Miya @ Ishak Mahmmd Miya Son of Fajal Miya Resident of Mohala-
Ward No. 15, Chhaurahiya, Ratanmala, Police Station- Majhauriya, District-
West Champaran.

.. ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The District Magistrate, West Champaran, Bettiah.
3. The Additional Collector, West Champaran, Bettiah.
4. The Sub Divisional Magistrate, West Champaran, Bettiah.
5. The Superintendent of Police, West Champaran, Bettiah.

... ... Respondents

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar No 7,Advocate
For the Respondent/s : Mr.Anil Kumar,AC to SC-8

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 18-03-2021

The office notes as regards the deposit of cost is unwarranted. That was a conditional order. The State has already filed the additional counter affidavit.

2. The present writ application was initially filed seeking quashing of the order dated 16.01.2019 contained in letter no. 24 issued by the District Magistrate, West Champaran at Bettiah (respondent no. 2) directing to conduct a departmental proceeding through the Additional Collector (Departmental Enquiry) West Champaran, Bettiah against the petitioner. The petitioner also prayed for a direction to the respondents to consider revoking his suspension and appoint him on his regular post.



3. During pendency of the writ application since final order has been passed by the disciplinary authority and a decision has been taken to terminate the petitioner from service, the petitioner has, after seeking leave of this Court, challenged the order of termination by filing an Interlocutory Application No. 01 of 2020. The petitioner has, thus, challenged the final order as contained in Memo No. 804 dated 16.07.2020 issued under signature of the District Magistrate, West Champaran, Bettiah.

Brief Facts of the Case

4. Learned counsel for the petitioner has placed before this Court the following facts for the purpose of adjudication.

5. The petitioner was at the relevant time working as chaukidar at beet No. 3/12 in P.S. Majhauriya, District West Champaran. One Rahul Shrivastava who was the Branch Manager of the State Bank of India Paras Pakari Branch lodged a First Information Report giving rise to Majhauriya P.S. Case No. 15 of 2016 against the unknown accused persons under Section 457 and 380 of the Indian Penal Code. The allegation was that unknown persons had entered in the Bank and committed dacoity. Police investigated the case and submitted a chargesheet on 25.03.2016 against four named accused persons including this petitioner.

6. The Superintendent of Police, Bettiah (respondent no. 5) requested the respondent no. 2 to dismiss the petitioner from service because of the filing of the chargesheet against him. A departmental



proceeding was, thus, initiated against the petitioner and a charge contained in prapatra 'क' was issued to the petitioner. Annexure '3' to the writ application is prapatra 'क'.

7. It appears that vide letter no. 699 dated 08.07.2016 issued by respondent no. 2, the Additional Collector (Departmental Enquiry) West Champaran was authorised for conducting the departmental enquiry. After his transfer from the District one Shri Nurul Haque Sivani, Senior Deputy Collector, West Champaran was authorised to act as an Enquiry Officer.

8. Shri Nurul Haque Sivani submitted his enquiry report vide letter no. 198 dated 19.02.2018 stating therein that because the matter is subjudiced before the Hon'ble Court, hence, till the final decision of the Court it would not be appropriate to take any action. His observation was not liked by the then Collector who sent back the file to Shri Sivani, the Senior Deputy Collector for remarks and once again Shri Sivani wrote the same thing vide his letter No. 61 dated 07.07.2018. Not being happy with the recommendation of Shri Sivani to await the order of the Court, the District Magistrate, West Champaran vide order dated 04.01.2019 contained in Memo No. 24 dated 16.01.2019 authorised the Additional Collector (Departmental Enquiry) to conduct the departmental proceeding and authorised C.O. Majhauliya to act as Presenting Officer in the matter. The Additional Collector, Departmental Enquiry submitted his final report against the writ petitioner vide letter no. 52 dated 19.06.2020.



9. It is the stand of the respondents that the petitioner was given an opportunity of hearing and submit his reply to the enquiry report which was accordingly done but the competent authority vide order dated 16.07.2020 (attached with the interlocutory application) dismissed the petitioner from service with effect from the date of issuance of the order.

10. Learned counsel for the petitioner submits that on bare perusal of prapatra 'क' it would appear that the charge framed against the petitioner may be taken to have been proved only when the guilt of the petitioner is proved before the learned trial court. It is submitted that by judicial pronouncement, it has been held times and again that chargesheet in itself is not a proof of guilt. The petitioner has been though chargesheeted but that alone would not be a proof of misconduct on the part of the petitioner. No other charge of any suspicious conduct or lack of shouldering responsibility could be brought against this petitioner.

11. It is submitted that there was no reason for the Disciplinary Authority to change the Enquiry Officer and it is evident from his conduct that the Enquiry Officer was changed because the Senior Deputy Collector, Shri Sivani who was acting as the Enquiry Officer was taking a correct approach to await the final outcome of the criminal case pending against the petitioner.

12. According to learned counsel for the petitioner, the Enquiry Officer was changed only to get a favourable report to complete the



records before passing the order of dismissal against the petitioner. The Disciplinary Authority was, thus, acting with bias and action taken in haste against the petitioner is nothing but a result of an action which suffers from malice in law, if not in fact.

13. Learned counsel for the State does not dispute the factual aspect that the charge was served on the petitioner in Prapatra 'क' only on the basis of the fact that a chargesheet was filed against the petitioner in the criminal case. Submission of the chargesheet in the criminal case has been taken as an instance of lack of discipline and the same has been treated as a case of misconduct. Learned counsel has, however, defended the impugned order as according to him before passing the impugned order principle of natural justice has been fully complied with.

Consideration

14. After hearing learned counsel for the parties and on perusal of the records, this Court finds that the prapatra 'क' was issued against the petitioner with the following charges

प्रपत्र-“क”

- 1.कर्मचारी का नाम:- इशहाक मियां,
- 2.पदनाम:- चौकिदार,
- 3.विभाग का नाम:- गृह(आरक्षी) विभाग बिहार
- 4.कार्यालय का नाम:- अंचल कार्यालय मझौलिया
- 5.वेतनमान:- 5200-20200
- 6.ग्रेड वेतन:-1800

क्र०	आरोप	आरोप का विवरण	संलग्न साक्ष्य
01	मझौलिया थाना काण्ड संख्या- 15/2016 दिनांक- 17.01. 16 धारा 457/380 भा० द०	मझौलिया थाना काण्ड संख्या- 15/2016 का अनुसंधान में धारा-457/380/411 भा०	पुलिस अधीक्षक के पत्रांक- 2302/भी० ओ० दिनांक- 10.06.16



वि० में आरोपी होना	द० वि० के तहत काण्ड सत्य पाये जाने के कारण मिरफ्तार कर न्यायिक हिरासत में भेजा जाना/काण्ड में संलिप्त पाया जाना/संदिग्ध आचरण एवं कर्तव्यहीनता का घोटक है। आपका यह आचरण बिहार सरकारी सेवक के आचरण नियमावली के प्रतिकूल है।	
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प्रभारी पदाधिकारी
जिला सामान्य,शाखा
पश्चिम चम्पारण,बेतिया

अपर समाहर्ता,
(विभागीय, जॉच)
पश्चिम चम्पारण, बेतिया

जिला पदाधिकारी,
पश्चिम चम्पारण, बेतिया।

15. The petitioner replied to prapatra 'क' and after requesting the authorities to provide him some relevant papers, he submitted his written reply which is annexed to the letter no. 23 dated 18.03.2017 written by the Enquiry Officer-cum-Senior Deputy Collector, West Champaran, Bettiah. In his written reply, the petitioner submitted that he belongs to an extremely backward class, he is a muslim but has been made accused in this case only because the co-accused disclosed the name of one 'Khan' who was also involved in the alleged occurrence. The petitioner claimed that he has been taken as 'Khan' though his name is only 'Ishak Miya'. The petitioner also submitted that because criminal proceeding is still pending and the final outcome of the criminal proceeding is yet to come, the departmental proceeding be kept in abeyance.

16. This Court has already taken note of the fact as to how Shri Sivani, the Senior Deputy Collector placed his notes twice before the District Magistrate, West Champaran saying that it would not be appropriate to take any action in the departmental proceeding at this stage



as the matter is subjudiced before the Hon'ble Court but after his second note the Enquiry Officer was changed.

17. The copy of the enquiry report submitted to the Incharge Officer of the District General Section West Champaran is available on the record with the counter affidavit as Annexure 'C'. The Enquiry Officer has taken note of the charge framed against the petitioner. He has also taken note of the stand of the petitioner who has repeatedly stated that the petitioner cannot be adjudged guilty in the said case when the trial is still pending. The Enquiry Officer has recorded his opinion by saying that because police has submitted a chargesheet against him, therefore, the conduct of the petitioner is suspicious and it indicates lack of sincerity on his part.

18. The Disciplinary Authority though gave an opportunity to the petitioner to submit this show cause and the petitioner submitted his show cause as contained in Annexure '12' attached to the interlocutory application, the Disciplinary Authority proceeded to pass the impugned order. The Disciplinary Authority simply recorded the stand of the petitioner and the stand of the Presenting Officer as also the conclusion reached by the Enquiry Officer and thereafter proceeded to pass the impugned order. The relevant part of the impugned order is being reproduced hereunder for a ready reference:

“कथित आरोप का आधार मझौलिया थाना काण्ड संख्या 15/16 का आरोपी होना बताया गया है तथा साक्ष्य के रूप में पुलिस अधिक्षक के पत्रांक 2302/16 को आधार मानकर



मझौलिया थाना काण्ड संख्या 15/16 धारा 457/380 भा0द0वि0 में संलिप्तता को सही बताते हुए आरोप पत्र न्यायालय में समर्पित किया गया है। जब तक न्यायालय द्वारा आरोपी घोषित नहीं किया जाता, तब तक आरोप प्रमाणित करना न्यायसंगत नहीं है। संचालन पदाधिकारी एवं उपस्थापन पदाधिकारी द्वारा पूर्व में दिये गए स्पष्टीकरण पर बिना विचार किये ही आरक्षी अधीक्षक, बेतिया के आरोप को आधार मानकर दोष प्रमाणित करना नियमानुकूल नहीं है। अपनी सेवाकाल में पूर्ण निष्ठा एवं ईमानदारी से अपने कार्य एवं दायित्व का निर्वहन करते आ रहा हूँ। किसी भी प्रकार का कोई अन्य शिकायत दर्ज नहीं हुआ है। इस प्रकार से निलंबित चौकीदार के द्वारा कारण पृच्छा में लिखित स्पष्टीकरण के विचारण के पश्चात निलंबन से मुक्त करने का अनुरोध किया गया है।

समीक्षा:-

श्री इशहाक मियां, निलंबित चौकीदार बीट नं0-03/12 थाना- मझौलिया के विरुद्ध गठित आरोप के मध्देनजर विभागीय कार्यवाही का संचालन किया गया है। दिनांक- 09.07.2019, 30.07.2019, 17.08.2019, 27.12.2019, 17.08.2020 एवं 25.01.2020 को आरोपी इशहाक मियां एवं उपस्थापन पदाधिकारी को नोटिस निर्गत कर विधिवत सुनवाई की गयी। आरोपी कर्मी को भी सुना गया तथा उपस्थापन पदाधिकारी द्वारा समर्पित प्रतिवेदन का अवलोकन किया गया। आरोपी कर्मी इशहाक मियां के द्वारा अपने बचाव में तथ्यों को आधार बनाया है:-

1. क्रि.मी नं0 19019/16 के तहत माननीय उच्च न्यायालय के द्वारा जमानत पर मुक्त किया जाना। उक्त के संदर्भ में माननीय उच्च न्यायालय के आदेश दिनांक 13.03.2016 का अवलोकन किया गया, जिसके माध्यम से इन्हें 10000/-रु0 के मचलके पर जमानत देने का आदेश दिया गया है। इस आदेश में आरोपी कर्मी के विरुद्ध गठित आरोप अथवा दर्ज कांड के गुण-दोष पर कोई टिप्पणी अंकित नहीं किया गया है। इसलिए इनका यह आधार तथ्यहीन है।

2. इस कांड में गिरफ्तार अभियुक्त के द्वारा किसी खान को संलिप्त होना स्वीकार किया गया है, जो बैंक का कर्मी है।

आरोपी कर्मी के द्वारा कारण पृच्छा में दिए गए तर्क की "किसी खान नाम के व्यक्ति की संलिप्तता स्वीकारी गयी है" के संदर्भ में इनके द्वारा दैनिक कांड की छायाप्रति प्रस्तुत किया गया है। कांड दैनिक की छायाप्रति (04791299 अंकित) के तीसरी कंडिका में संजय यादव के स्वीकारोक्ति में "प्रतिनियुक्त चौकीदार इशहाक मियां पे0 फजल करीम मियां साकिन-छौरहिया थाना-मझौलिया को गिरफ्तार किया गया है" अंकित है। इस कंडिका से आरोपी कर्मी का कथन बिल्कुल विपरीत है एवं इनके कथन के प्रतिकूल है।

इस मामले के पु0अ0नि0 सुधीर कुमार के DRN1257/17 दिनांक 04.08.2017 से समर्पित प्रतिवेदन भी महत्वपूर्ण है, जिसमें अंकित किया गया है इस काण्ड में गिरफ्तार अभियुक्तों के स्वीकारोक्ति बयान के आधार पर चौकीदार इशहाक मियां को न्यायिक हिरासत में भेजा गया है। तत्पश्चात् आरोप पत्र समर्पित किया गया है

ऐसे मामलों के संदर्भ में CWJC No- 4857/110 Brij Kumar Singh V/S the State of Bihar में माननीय उच्च न्यायालय के द्वारा पारित आदेश दिनांक 09.11.2010 में वर्णित है कि

"The petitioner belonged to a disciplined uniformed force. The standard of conduct that was expected from him is far more rigorous and exacting than that applicable to a civilian service. If on a preponderance of probabilities a member of a uniformed service is



found to have acted contrary to the solemn oath that he took when he donned the uniform to uphold and protect the law he must suffer the consequence”.

यह भी एक तथ्य है कि इन्हें काण्ड में संलिप्त पाकर ही इनके विरुद्ध आरोप पत्र समर्पित किया गया है तथा पुलिस अधीक्षक के द्वारा बर्खास्तगी की अनुशंसा की गयी है। जिससे स्पष्ट है कि श्री ईशहाक मियां, निलंबित चौकीदार बीट नं० 03/12 थाना-मझौलिया द्वारा सरकारी कर्मों के आचरण एवं कर्तव्य के विपरीत जाकर कार्य किया गया है, जो घोर कर्तव्यहीनता एवं संदिग्ध आचरण का परिचायक है।

निष्कर्ष:-

उपरोक्त विवेचन से श्री ईशहाक मिया, चौकीदार बीट सं० 3/12 थाना-मझौलिया के विरुद्ध प्रपत्र “क” में लगाये गये आरोप प्रमाणित होते हैं

द्वितीय कारण पृच्छा में भी आरोपी कर्मों के द्वारा कोई नवीन तथ्य प्रस्तुत नहीं किया गया है। तदालोक में इनके द्वितीय कारण पृच्छा को अस्वीकृत किया जाता है।

अतः संचालन पदाधिकारी के निष्कर्ष जिसमें (आरोप प्रमाणित होता है के आलोक में) बिहार सरकारी आचार नियमावली 1976 की धारा 3 एवं 4 एवं धारा 457/380/411 भा०द०वि० के तहत आरोपी होने के कारण मै कुंदन कुमार, भा०प्र०से०, जिला पदाधिकारी, पश्चिम चम्पारण, बेतिया बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली – 2005 (यथा संशोधन) 2007 के भाग-5 के नियम 14 में निहित शक्तियों के आलोक में श्री इशहाक मियां, निलंबित चौकीदार, थाना अंचल- मझौलिया, बीट नं० 3/12 को आदेश निर्गत की तिथि से सेवा से बर्खास्तगी (Dismiss) का दंड अधिरोपित करता हूँ।”

19. On going through the impugned order, this Court finds that the Disciplinary Authority has not at all considered the submissions of the petitioner that at this stage there is only a chargesheet against him which is not a conclusive proof of the guilt. Before the Disciplinary Authority there was no other material in form of evidence to take a view that the petitioner is guilty of misconduct. The one and only material which has been noticed by the Disciplinary Authority is the statement of the co-accused recorded in the case diary. The Disciplinary Authority seems to have swayed away with the statement of the co-accused who had taken the name of one person, namely, ‘Khan’ who was also allegedly involved in the alleged occurrence. The disciplinary authority was perhaps not aware of the National Police Commission’s report which says that in India 43.2% of the



jail expenditure are being incurred on those who in ultimate analysis ought not to have been arrested. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of **Joginder Kumar vs. State of U.P. and others** reported in **AIR 1994 SC 1349**. A member of the uniformed force cannot be thrown out of service by holding him guilty only because he was arrested in a case in which the trial is still pending.

20. This Court is of the considered opinion that the Disciplinary Authority has acted in haste in concluding the matter on the basis of the statement of the co-accused coming in the case diary. He has taken to have the charge proved against the petitioner only because in the criminal case a chargesheet has been filed against him. The view taken by the Disciplinary Authority is totally perverted and cannot stand the test of law.

21. The impugned order (Annexure '13' to the Interlocutory Application) as contained in Memo No. 804 dated 16.07.2020 issued under signature of the District Magistrate, West Champaran, Bettiah. being wholly illegal, arbitrary and bad in law the same is hereby set-aside.

22. The matter is remitted to the Disciplinary Authority with a direction to keep the disciplinary proceeding in abeyance till conclusion of trial. Once the trial stands concluded, the Disciplinary Authority may proceed with the departmental proceeding, if so advised. Let the petitioner be reinstated in service within a period of 30 days from today.



23. A decision as to the consequential benefits for the period the petitioner has remained under termination shall be taken after conclusion of the departmental proceeding. In case, the petitioner is acquitted in the trial and the department does not proceed afresh with the departmental proceeding, the District Magistrate, West Champaran shall be obliged to take a decision with regard to payments of the said period.

24. The writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.03.2021
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

