

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17398 of 2014

Vijay Kumar @ Vijay Kumar Singh S/o Sri Deo Narayan Singh Resident of
Village Irdpey, P.S. District Jamui.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Bhagalpur Zone, Bhagalpur.
4. The Deputy Inspector General of police, Munger Division, Munger.
5. The Deputy Inspector General of Police Administration, Bihar, Patna.
6. The Superintendent of Police, Munger, District Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar
For the State	:	Mr. Ashok Kumar Dubey (AC to AAG-11)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 08-03-2022

Heard learned counsel for the parties.

In the instant petition, petitioner has prayed for the
following relief/reliefs:

*“The petitioner prays for
issuance of appropriate order/orders,
direction/directions, writ/writs for
following reliefs:*

*i) A writ in the nature of
certiorari setting aside the order
containing Memo No. 5405 dated
30.09.2013 (Annexure-17) passed in
Departmental Proceeding No.*



108/2011 by Respondent No.6 whereby and where-under petitioner who is constable bearing No.676 of Munger District Force has been dismissed from service with further direction that he will not get anything except subsistence allowance for the period of suspension and suspension period will be adjusted against half earned leave.

ii) For setting aside the Memo No.1391 dated 27.06.2014 (Annexure-18) passed by Respondent No.4 whereby and where-under the Appellate Authority has dismissed the appeal preferred against the order of dismissal and affirmed the order passed by Disciplinary authority.

iii) For a direction upon the Respondents concerned to reinstate the petitioner in service with all consequential monetary benefits.

iv) Any other order/orders for granting any other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of this case.”

The petitioner was appointed as Home Guard on 07.08.1989 while furnishing date of birth as 20th October, 1968.



Pursuant to the advertisement to the post of constable on 10.02.2004, petitioner was a candidate for the selection and appointment to the post of constable. He was selected on 09.05.2008, his documents were verified for the purpose of appointment on 04.07.2008. Before issuing order of appointment, an F.I.R. was registered on 18.07.2008 on the charge that petitioner has furnished two date of births, namely, 20.10.1968 and 02.06.1975 (transfer certificate and matriculation certificate). The petitioner is stated to have passed matriculation while he was holding the post of Home Guard on 25.11.1992. Thus, he had furnished the date of birth for the purpose of selection and appointment to the post of Constable with reference to matriculation certificate.

Similarly situated persons have approached this Court, insofar as rectification of date of birth and it was disposed of vide Annexure-6. Petitioner also approached this Court, his petition was disposed of vide Annexure-7, asking the petitioner to submit detailed representation and in the light of earlier decision of this Court, it was disposed of. Thus, petitioner was appointed on 14.04.2011. Based on Investigating Officer on the criminal side, disciplinary authority placed the petitioner under suspension on 04.11.2011. On the departmental



side, petitioner was issued a charge memo on 13.11.2011. Petitioner submitted his reply on 25.01.2012. Disciplinary authority was not satisfied with the petitioner's reply and proceeded to hold domestic enquiry and it was concluded on 11.07.2013 while holding the charge levelled against the petitioner was proved. Based on the Enquiring Officer's report dated 11.07.2013, the disciplinary authority issued second show-cause notice on 05.08.2013. Further, the disciplinary authority proceeded to impose penalty of dismissal from service on 13.09.2013. Feeling aggrieved and dissatisfied with the order of penalty, petitioner exhausted the remedy of appeal and memorial and it was rejected on 27.06.2014 and 23.06.2015 respectively. Thus, the petitioner has presented this petition.

Learned counsel for the petitioner submitted that for the purpose of Home Guard, the eligibility qualification is 8th standard and he was appointed on 07.08.1989. He has passed matriculation on 25.11.1992. In the Home Guard records, date of birth has been shown as 20.10.1968. At the time of selection and appointment to the post of Constable which is based on the matriculation qualification. In the matriculation certificate, date of birth has been shown as 02.06.1975. Thus, there is a variation, ultimately, date of birth recorded in the matriculation



is required to be taken note of for the selection and appointment to the post of Constable. It is further submitted that in the enquiry, it is not proved that petitioner has misled the selecting and appointing authority in furnishing two date of births. In fact, he has also relied on earlier decision of the State issued by respondent no.2 dated 15.01.2000 in respect of correction of date of birth in the service record. On this issue, petitioner is stated to have submitted representation and it was rejected. Learned counsel for the petitioner submitted that charge is that petitioner has furnished two date of births and name of the petitioner has not been shown in the application as reflected in the matriculation certificate. Inadvertently, full name has not been written in the application. It is also submitted that petitioner acquitted in the criminal case on 04.11.2015. While framing article of charges in the list of documents in respect of producing two date of births, namely, 20.10.1968, 02.06.1975 and name of the petitioner shown in the application for the post of Constable, the relevant documents have not been cited. In the absence of three documents, namely, transfer certificate, matriculation certificate and application form for the post of Constable applied by the petitioner are relevant documents. For the purpose of holding that the petitioner had furnished two date



of births and in not writing the correct name in the application. Therefore, from the initiation of enquiry till rejection of memorial dated 23.06.2015, all the proceedings are liable to be set aside on the score that relevant documents have not been analyzed in the inquiry proceedings.

Learned counsel for the respondents resisted the aforesaid contentions and submitted that petitioner has misled the respondent authority in furnishing two date of births viz, 20.10.1968 and 02.06.1975. It is also submitted that in the application form, petitioner has not written the name as reflected in the matriculation certificate. Therefore, there is no infirmity in the Enquiring Officer's report and consequential orders passed by the disciplinary authority, appellate authority and rejection of memorial of the petitioner. Further, learned counsel for the respondents submitted that petitioner has misled the selecting and appointing authority in not furnishing the materials stated in the matriculation, namely, name of the petitioner and date of birth, and different name and date of birth has been provided. Therefore, no interference in the impugned orders are warranted.

In the light of the aforesaid submission, question for consideration is whether the department have proved that the



petitioner has misled the respondents in respect of furnishing the date of birth, name or not. Three crucial documents, namely, transfer certificate which reflects the date of birth as 20.10.1968, matriculation certificate which reflects the date of birth as 02.06.1975 and name of the petitioner as Vijay Kumar or Vijay Kumar Singh. In the application form, petitioner has shown his name contrary to name reflected in the matriculation, so also, date of birth as 20.10.1970 instead of 02.06.1975. The aforesaid documents have not been cited as list of documents while issuing article of charges as is evident from Annexure-13. The following documents and witnesses have been cited is on Page 44 extract:

“प्रदर्श :-

01- स0अ0नि0 सूर्यमोहन सिंह का प्रतिवेदन, दि0-

02.11.11 की मूल प्रति।

02- कोतवाली थाना काण्ड सं0-231/08 दि0-

18.07.08 की छाया प्रति।

03- मोतीहारी प्रशिक्षण जिलादेश सं0-15/11,

दिनांक-04.11.11 की छाया प्रति।

04- मुंगेर जिलादेश सं0- 1664/11 दिनांक-

05.11.11 की छाया प्रति।

गवाह :-

01- र0अ0नि0 प्रथम पु0के0, मुंगेर।



02- स0अ0नि0 सूर्यमोहन सिंह, कोतवाली थाना।

03- परिचारी प्रवर, पुलिस केन्द्र, मुंगेर। "

Learned counsel for the respondents submitted that the aforesaid three documents are part and parcel of document no.1, however, author of the document no.1 has not been examined and cross-examined in the enquiry. That apart, if the charge is that the petitioner had furnished three date of births, the authors of the transfer certificate and matriculation certificate have not been examined in order to ascertain which is the correct date of birth. As long as date of birth reflected in the matriculation i.e., 02.06.1975, the same is required to be taken note of in the light of policy decision of the State-respondent no.2 issued on 15.01.2000. Therefore, the official respondents from the inception while framing article of charges have not cited the relevant documents to be relied on in order to prove the charge that the petitioner has misled the selecting and appointing authority in furnishing the date of birth and incorrect name. On this very issue, petitioner was subjected to criminal proceedings in filing F.I.R. on 18.07.2008 in which he was acquitted on 04.11.2015. As is evident from the acquittal order, it is crystal clear that the prosecution has failed to prove the charges in the criminal proceedings.



It is to be noted that before order of appointment was issued in favour of petitioner, petitioner's documents have been verified on 04.07.2008 and there were no objections till he was appointed on 14.04.2011.

The disciplinary authority has not appreciated in not taking note of the transfer certificate, matriculation certificate and application form for the post of Constable applied by the petitioner have not been taken note of in the enquiry proceedings. Similarly, appellate authority and author of the memorial rejection. Moreover, author of the report dated 02.11.2011 (document no.1) has not been examined and cross-examined in order to prove that the petitioner has misled the selecting and appointing authority to the post of Constable in furnishing incorrect material information.

The petitioner has furnished date of birth as 20.10.1970 in the application form for the post of Constable despite the fact that his date of birth as 02.06.1975 reflected in the matriculation certificate. Further, he has committed error in furnishing the name and it is contrary to the matriculation certificate. The petitioner's application for the post should have been rejected at the threshold or at the time of verification of documents. There are lapses on the part of selecting authority.



Therefore, *prima facie*, petitioner has not given correct information, at the same time, the aforesaid issue is required to be proved in the enquiry in the manner known to the law. Consequently, on technical ground, the impugned orders are set aside. The concerned respondent is hereby directed to reinstate the petitioner to the post of Constable. However, petitioner is not entitled to any monetary benefits during the intervening period from the date of dismissal namely, 13.09.2013 till his reinstatement to the post of Constable for the reasons that it is undisputed that in the petitioner's application, he has revealed the date of birth as 20.10.1970 even though in the matriculation, it is reflected as 02.06.1975. Similarly, incorrect name has been shown. The matter could have been remanded to hold enquiry afresh. Having regard to the fact that the petitioner's grievance is relates back to 2008, it is not appropriate asking the disciplinary authority to hold fresh enquiry, since it is not a case of misappropriation of government money. The concerned respondent is hereby directed to extend all service benefits like grant of increment, re-fixation of pay, seniority, even for pension, if any and other issues at par with his immediate junior who has been appointed w.e.f. 14.04.2011 to this date. The disciplinary authority is hereby directed to reinstate the



petitioner within a period of two months from the date of receipt
of this order.

Accordingly, writ petition stands allowed.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2022
Transmission Date	NA

