

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Date of Order:-

Registration No. QA-256 of 1996

14.9.99

Shri M.A. Ibrahim, I.A.S.,  
Son of Shri M. Mohammad, Director,  
Ministry of Textile, Udyog Bhawan,  
New Delhi-110011

... Applicant

Versus

1. The State of Bihar through Chief Secretary, Old Secretariat, Patna.
2. Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Old Secretariat, Patna.
3. Additional Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, Old Secretariat, Patna.
4. Home Secretary, Government of Bihar, Old Secretariat, Patna.
5. Union of India through the Secretary, Department of Personnel and Training, North Block, New Delhi

... Respondents

Counsel for the applicant

.. Mr. J.P. Shukla,  
Sr. Counsel

Counsel for the State of Bihar

.. Mr. B.N. Yadav, Standing  
Counsel for the State

Coram:- Hon'ble Shri L.R.K. Prasad, Member (Administrative)

Hon'ble Shri Lakshman Jha, Member (Judicial)

ORDER

Hon'ble Shri Lakshman Jha, Member (J):-

1. The applicant, M.A. Ibrahim, an I.A.S. Officer, has prayed for the relief of quashing/recalling the impugned resolution contained in Memo. No.8734 dated

21.9.95 (Annexure-A-1) issued by the Department of Personnel and Administrative Reforms pursuant to the order of the Government of Bihar regarding recording of warning in his ACR for the year 1980-81.

2. The applicant was posted as Sub-Divisional officer, Samastipur, in January, 1981. On 14.1.81 there was a Police firing in Samastipur Jail and one man Inquiry Commission was set up under Hon'ble Mr. Justice R.P. Mandal for conducting the inquiry. The Commission in its report dated 30.4.83 indicted the then District Magistrate and the Superintendent of Police, Samastipur, and recommended for action against them. The other Officer including the applicant and A.S.P., Samastipur, were exonerated. It is stated in the report that one Shri Chandeshwar Singh, Havaldar, had fired upon one Kari Singh, without the order of the SDO. Subsequently, the Police (Home) Special Department sought certain clarification/explanation regarding a proceeding under section 107 Cr.P.C. from the applicant vide letter No.1857 dated 2.5.84. The applicant submitted explanation vide letter No.255 dated 28.5.84 stating therein that on 10.1.81 one lawyer had met him in his Chamber and had requested for the release of one Lal Bahadur Rai, who had been arrested in connection with the proceeding under section 107 Cr.P.C. He advised the lawyer concerned to file proper application for bail in the Court of the Executive Magistrate who was to sit in the Court of S.D.O. from 1.00 P.M. The record of the proceeding showed that Shri Hiralal, Executive Magistrate, passed judicial order in respect of bail of Sri Rai and for verification of bail bond on 10.1.81, but on 13.1.81, Shri D.P.Ghosh, sitting Executive Magistrate as S.D.O. rejected bail

bond on the basis of the report after verification by the authority. Thus, the applicant had not passed order in respect of Shri Rai in the aforesaid proceeding under section 107 Cr.P.C. Therefore, there was no question of his action being termed as mechanical. Moreover, Shri Rai was a named accused in Samastipur Mufassil M P.S. Case No. 11(1)/81 under sections 433, 438 and 427 and he was remanded to judicial custody by the CJM, Samastipur on 12.1.81. He had not been released on bail in that case.

3. It is the further case of the applicant that the Personnel and Administrative Reforms Department of Government of Bihar, vide its letter No.1358 dated 7.12.89 issued under the signature of Additional Secretary, addressed to the Secretary (Home) Special Department communicated that the State Government after considering the report had not found the officer guilty and closed the entire matter concerning the Samastipur Jail File. Subsequently, Additional Secretary, Home (Special) vide his letter No. 1537 dated 28.9.92 communicated to I.G. (Prison) that the applicant and ASP had been exonerated by the Government. Thus, the State Government having exonerated the applicant could not have reopened the matter particularly in view of the fact that the Commission had not suggested any action against the applicant. ~~The Commission had suggested action against the~~ then D.M. <sup>and</sup> the then S.P., who were subsequently exonerated by the Government.

4. It is stated that the impugned communication, as at Annexure-A/1, had been issued on the ground, firstly, that the applicant was responsible for not relieving Lal Bahadur Rai on bail on the pretext of not furnishing proper bail bond, and secondly, that the Habildar, Chandeshwar

Singh had opened fire without the order of the S.D.O. on Kari Singh, who succumbed to the gunshot injuries. The applicant submitted representation on 1.11.95 reiterating his stand as stated in his aforesaid explanation vide letter No.255 dated 28.5.94. It is said that both the aforesaid grounds are non-est. The applicant was never asked any clarification relating to opening fire by Hawaldar Chandeshwar Singh who had opened fire without the order of the S.D.O. Besides, it was the direct duty of the police Officer to keep his contingent in discipline. There was no reference of the S.D.O. and the A.S.P. in the disciplinary proceedings against Hawaldar Chandeshwar Singh. The then District Magistrate, Samastipur in his letter dated 20.4.90 addressed to Shri P.K.Sinha, the then Vigilance Commissioner, Bihar, stated that the applicant had not committed any irregularity in the matter and had approved his action. The State Government in Home (Police) Department in response to Assembly Question categorically replied that the applicant had not been found guilty for firing by the Commission. But contrary to the actual facts, hastened to add vide question No.5, as at Annexure-A/3 that action for certain lapse on the part of the applicant was under consideration of the Government. The applicant was never given any opportunity to intimate the actual facts in this connection. The matter relating to section 107 of Cr.P.C. proceedings was bifurcated from the main incident of firing after 15 years, when the action on the main incident of firing itself had been dropped by the Government. There was no justification for bifurcating the unconnected issue relating to 107 Cr.P.C. proceedings afresh. The representation of the applicant in this connection dated 1.11.95 as at Annexure-A/2 is still pending

for disposal.

5. The Respondents Nos. (1) to (3) i.e. The State of Bihar through Chief Secretary, Commissioner-cum-Secretary and <sup>the</sup> Additional Secretary, Department of Personnel and Administrative Reforms in their Joint Counter have stated that the Department of Personnel and Administrative Reforms, vide letter No. 13582 dated 17.2.89, had closed, only the charge against the then District Magistrate, Anup Mukherjee, ~~the~~ Home (Special) Department had communicated to the Department of Personnel and Administrative Reforms that the State Government had accepted the explanation of the applicant with warning to remain cautious in future, vide letter No. 2588 dated 31.12.93. The Department of Personnel and Administrative Reforms examined the matter and ~~and~~ obtained the order of the Government and communicated warning to the applicant vide letter No. 8734 dated 21.9.95.

6. The Respondent No. 4, <sup>the</sup> Home Secretary, Government of Bihar, in ~~this~~ Counter has stated that the Divisional Commissioner had not held the applicant responsible for Samastipur Jail Police firing. But the Commission had adversely commented against him ~~to~~ the effect ~~that he~~ had not released the said Lal Babu Rai on bail in the proceedings under section 107 of the Cr.P.C. on the pretext ~~that the~~ bail bond furnished by Shri Rai was not genuine. It is denied that the Department had not examined the explanation of the applicant. In fact, the Personnel Department, Government of Bihar, in their letter No. 13582 dated 6.12.89 had intimated to the Home (Special) Department in reference to their letter No. 2019 dated 8.11.87 that the report of the inquiry commission has been reconsidered by the Government, but

6.

it did not convey that all officers were not found guilty. However, Mr. Anup Mukherjee, the then District Magistrate, Samastipur, had not been found guilty and <sup>is</sup> the matter concerning Samastipur Jail firing had been closed. It admitted that the Home Police (Special) Department communicated to the I.G. (Prison) that the SDO (the applicant) and the <sup>then</sup> ASP, Samastipur had not been found guilty for Samastipur Jail Police firing by the Commission vide letter No.1537 dated 28.9.92, but the applicant was held responsible by the Commission for not granting ~~in~~ bail to late Lal Babu Rai. The State Government sought an explanation in the matter from the applicant who submitted explanation vide his letter No.255 dated 28.5.84. The Home (Special) Department after obtaining comments of the then District Magistrate and the Divisional Commissioner examined the explanation of the applicant and decided to accept his explanation, but with warning for future. In such circumstances, there was no question of sending another letter to the applicant.

8. It is further stated that the Government had replied in the Assembly that the applicant was not held responsible for police firing, but, at the same time, the Commission gave an adverse comments on him for not granting bail to Shri Lal Babu Rai in 107 Cr.P.C. proceedings. Therefore, the Government replied in other part of the Assembly question that the Government had sought an explanation for lapses on the part of the applicant and the explanation submitted by him was under consideration. Thus, there was no question of closing the matter or opening the matter. The representation of the applicant was accordingly rejected.

9. Heard Shri J.P. Shukla, learned counsel for the applicant and Shri B.N.Yadav, learned Standing

Counsel for the State of Bihar and perused the records.

10. It is the admitted position that the applicant has not been held responsible in any manner for the main incident of Samastipur Jail firing. It is also admitted position that the Respondents - State of Bihar in Home (Special) Police Department in their communication to the I.G. (Prisons) intimated that the applicant had not been found guilty for Samastipur Jail firing by the Commission vide letter No.1537 dated 28.9.1992, and the Government exonerated the then Sub-Divisional Officer, Shri Md. Ashiq Ibrahim (applicant) and the then A.S.P., Samastipur. It is also clear from the report of the Commission as at Annexure-A/4, read with the Assembly Question vide Question No.A-38, as at Annexure-A/3, that the applicant had not been found guilty for the incident of firing in Samastipur Jail on 14.1.1981. The then District Magistrate, Samastipur, in his letter dated 20.4.90 to Shri P.K.Sinha, the then Vigilance Commissioner, Bihar, had also stated that the applicant had not committed any irregularity in the matter and had approved his action. But, <sup>the</sup> whole difficulty arose due to the fact that the Commission in its report dated 30.4.83, made an observation that the applicant, while discharging the duties of the SDO, Samastipur, passed order in mechanical way, rejecting the bail bond of one Lal Bahadur Roy in a proceedings under section 107 Cr.P.C. on the pretext that the Bail Bond furnished by Shri Roy was not satisfactory.

It appears that Shri Roy while in Jail became a victim of firing. This observation of the Commission against the applicant led to calling for <sup>an</sup> explanation from the applicant by the Police Home (Special) Department vide letter No. 1857 dated 2.5.84. The applicant submitted his explanation vide letter No.255 dated 28.5.84 taking

the plea that he had not passed any order in the proceedings under section 107 Cr.P.C. in respect of ~~Shri Lal Bahadur Roy~~ and ~~had not~~ rejected his bail bond. The applicant stated in his application that one lawyer had met him on 10.1.81 in his chamber in connection with the bail of Shri Lal Bahadur Roy, but he had advised the lawyer concerned to move in the matter before the Executive Magistrate, who was to sit in the Court of the SDO on that date. While the aforesaid explanation of the applicant was pending with the Respondents State of Bihar, an Assembly question was asked as to whether the applicant had been held responsible for Samastipur Jail firing and, if so, what action had been taken against him.

11. The Minister, Home Police, in his reply to the aforesaid question stated in the assembly that ~~the~~ <sup>late</sup> ~~had~~ Shri Lal Bahadur Roy <sup>had</sup> filed a bail petition before the applicant in the proceedings under section 107 Cr.P.C. which he ~~dealt with~~ in a mechanical way, as a result of which the deceased Roy had to remain in Jail. It was denied that the Commission had held him guilty for Police firing in the Jail. It further appears from Annexure-3, the Assembly Question, Vide Question No.5 as at Annexure-A/3 dated 6.9.86 that the Minister concerned assured the house that the applicant had already submitted his explanation for <sup>the</sup> lapse on his part, and it was under consideration of the Government.

12. Thereafter, it appears that in compliance of the aforesaid assurance given by the Minister Incharge on <sup>that</sup> the floor of the house <sup>the</sup> impugned order was passed as far back as on 28.10.92, which was communicated by the Secretary (Home) to the Secretary, Personnel and Administrative Reforms, Bihar, Patna, vide letter No.3088 dated 3.12.93. However, the aforesaid decision of the



Government of Bihar was communicated to the applicant vide the impugned Memo. No. 8734 dated 21.9.95, as at Annexure-A/1. The applicant submitted his representation to the Commissioner and Secretary, Department of Personnel and Administrative Reforms on 1.11.95 vide Annexure-A/2.

13. The learned counsel for the applicant contended that the proceedings under section 107 Cr.P.C. in respect of late Lal Bahadur Rai was not pending before the applicant. He had not passed order in respect of him either for his remand to jail custody or in the matter of rejecting his bail bond. In other words, at no point of time the applicant was in seisin of the proceedings under section 107 Cr.P.C. in respect of Late Lal Bahadur Rai. Therefore, the observation of the Commission was based on non-existent fact. In this connection, it is further submitted that the then Executive Magistrate, Shri Hira Lal, had ordered to verify the Bail Bond as well as Bailer on 10.1.81 and on 13.1.81, Shri D.P.Ghosh, Executive Magistrate, had rejected the Bail Bond on the basis of the report submitted by verifying authority. The order for issuance of Bailable warrant had been issued by order of Shri D.P.Ghosh, Executive Magistrate. Thus, the applicant, as SDO was nowhere in the picture.

14. The Respondent State of Bihar does not appear to have refuted the aforesaid categorical statement of the applicant. It may be pointed out that the applicant had taken this stand at the earlier stage of his explanation submitted vide letter No.255 dated 28.5.84. The then District Magistrate, Samastipur, in his report to the Vigilance Commissioner, Government of Bihar, justified the action of the applicant vide his letter dated 20.4.90 which is in the following words:-

"I, therefore, feel that S.D.O.'s explanation for his actions, i.e. requesting the

lawyer to take up the matter in the court which was to sit very shortly, is fully justified. This cannot be held to be a mechanical exercise of his duties resulting in miscarriage of justice. An S.D.O. has to fulfil various responsibilities and it is normal and legitimate to advise the Advocate to take up legal matters in the Court especially when the Court was to sit after only about an hour. The exercise would have been mechanical only if the matter was very urgent and pressing matter, brooking not even an hour's delay. Based on the recital of facts contained in the explanation, I feel that the Officer acted correctly."

15. It is stated that the then Commissioner-cum-Secretary, Cabinet(Vigilance)Department, endorsed the aforesaid view of the then District Magistrate, Samastipur, vide his letter No. 60 dated 17.8.91 addressed to Shri F. Minz, Under Secretary, Home (Special) Department.

16. The learned counsel for the applicant contended that the Commission itself while observing that the applicant had passed order mechanically in respect of the release of late Lal Bahadur Rai in the aforesaid proceedings under section 107 Cr.P.C. did not recommend to take any action against him. The then District Magistrate, who was indicted and recommended for action was awarded the punishment of "Censure". However, the Government subsequently held him not guilty and expunged the remarks of "Censure" as recorded against him. The whole trouble with the applicant leading to the aforesaid remarks of warning against him is due to the fact that the Minister concerned assured on the floor of the House to a query regarding the action taken against the applicant for the lapses as pointed out against him by the Commission. The Hon'ble Minister in a reply to the question of the Hon'ble Member had stated that as far back as in September, 1986 the explanation of the applicant had been received and it was under consideration of the Government. Pursuant to the aforesaid assurance on the floor of the house after

a lapse of about 13 years, the impugned order dated 21.9.95 as at Annexure-1, was passed by the Government. It may be pointed out that the Hon'ble Minister in reply to a query vide item No.4, as at Annexure-A-3 had stated that according to the observations of the Commission, the applicant had mechanically directed the bail petition of late Lal Bahadur Rai in a proceedings under section 107 Cr.P.C. to be presented in the Court, as a result of which he (Late Lal Bahadur Rai) had to remain in the jail custody. The aforesaid reply of the Hon'ble Minister read with explanation of the applicant as at Annexure-A-2, leaves no room for doubt that the applicant had rightly directed to ~~the~~ lawyer concerned to move the bail petition in the Court before the Executive Magistrate, who was to sit in the Court of the S.D.O. The stand of the applicant appears quite appropriate and in accordance with the judicial norms. It was destined that late Lal Bahadur Rai became a <sup>victim</sup> ~~part~~ of police firing inside the jail on the fateful day. The applicant is not ~~expected to~~ envisage such incident prior to its taking place. Moreover, as has rightly been pointed out that late Lal Bahadur Rai had been ~~remanded~~ to judicial custody by the learned Chief Judicial Magistrate, Samastipur, in ~~an~~ another case and he had not been allowed bail in that case. The aforesaid fact was not brought to ~~the notice~~ of the Commission. Thus, from the materials on record it is crystal clear that the aforesaid observation of the Commission is not based on the aforesaid facts, and therefore, adverse remarks regarding recording warning in his ACR as contained in Annexure-A-1 is not sustainable.

17. In the result, the impugned Resolution No.8734 dated 21st September, 1995 (Annexure-A-1) of the Personnel and Administrative Department, Government of Bihar, by which it was decided to give warning in the ACR of the applicant for the year 1980-81, is quashed. The Respondents are directed to expunge the remarks of warning recorded in the ACR for the year 1980-81. The remark shall not stand in the way of his career. The above direction should be complied within a period of two months from the date of receipt of a copy of this order. There shall be no orders as to costs.

*Lakshman Jha*  
14.9.99  
( Lakshman Jha )  
Member (J)

*L.R.K. Prasad*  
14.9.99  
( L.R.K. Prasad )  
Member (A)

SKS