

**(2011) 09 PAT CK 0170**

**Patna High Court**

**Case No:** CWJC No. 17447 of 2008

Ram Kumar Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision:** Sept. 5, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 14

**Hon'ble Judges:** V.N. Sinha, J

**Bench:** Single Bench

**Final Decision:** Allowed

---

### **Judgement**

@JUDGMENTTAG-ORDER

V.N. Sinha, J.

Heard Learned Counsel for the Petitioner, the Petitioner as also the counsel for the State. At the relevant time, Petitioner served as Arms Magistrate in the Collectorate at Begusarai. He has filed this writ petition challenging the Resolution of the State Government bearing Memo No. 1148 dated 30.1.2008, Annexure-1 where under he has been punished with minor punishment of censure recorded for the year 1999-2000, stoppage of one increment without cumulative effect and non-payment of salary beyond the subsistence allowance during the period of suspension.

2. Perusal of the punishment order indicates that such punishment has been imposed after initiating a departmental proceeding under Resolution bearing Memo No. 4668 dated 3.5.2007, Annexure-11. Perusal of the Resolution bearing Memo No. 4668 dated 3.5.2007, Annexure-11 indicates that Petitioner is said to have renewed the arms licence of Sri Subodh Rai Sharma on 15.10.1999, which had lapsed on 31.12.1993 without obtaining permission from the District Magistrate as was required under the Arms Act and the Rules framed there under.

3. It is submitted on behalf of the Petitioner that the aforesaid charge-sheet was served on him under Resolution bearing Memo No. 4668 dated 3.5.2007, Annexure-11 after he filed C.W.J.C. No. 2715. of 2007 on 1.3.2007 praying, inter alia, to direct the State-Respondents to issue Integrity Certificate so as to enable the Union of India to consider the case of the Petitioner for promotion into the Indian Administrative Service. In this connection, it is pointed out that Petitioner was earlier served with show cause notice dated 16.6.2001, Annexure-3 for the same allegation set out in the letter of the District Magistrate, Begusarai, bearing No. 593/C dated 15.3.2001, Annexure-2, failing which it shall be deemed that he is not to refute the charge levelled in the letter dated 15.3.2001 of the District Magistrate, Begusarai. In response to the aforesaid show cause notice dated 16.6.2001, Annexure-3, Petitioner asked for the documents from the Joint Secretary under letter No. 558 dated 28.6.2001, Annexure-4. It is further submitted on behalf of the Petitioner that request of the Petitioner to make available the order by which licence was renewed by him without the approval of the District Magistrate was not granted and Petitioner received letter No. 3855 dated 2.11.2001 asking him to submit show cause reply within two weeks, as it was his responsibility to disprove the charge. Petitioner in response to the instructions contained in letter dated 2.11.2001, submitted his show cause reply dated 19.11.2001, Annexure-5 refuting the charge that he granted renewal of licence of Sri Subodh Rai Sharma without the approval of the District Magistrate. He made categorical statement that licence of Sri Subodh Rai Sharma was renewed with the approval of the District Magistrate and allegation to the contrary is incorrect. The authorities did not choose to pass any order on the cause shown by the Petitioner under show cause reply dated 19.11.2001, Annexure-5. Meanwhile, the case of other colleagues of the Petitioner was being considered for promotion to the Indian Administrative Service and Petitioner learnt that Integrity Certificate is not likely to be issued in his case as the allegations in regard to renewal of arms licence of Sri Subodh Rai Sharma was still pending against him. He filed C.W.J.C. No. 2715 of 2007 on 1.3.2007 praying, inter . alia, to direct the State Respondents to issue Integrity Certificate in his favour so that his case is also considered for promotion into the Indian Administrative Service where after he was placed under suspension under Resolution of the State Government bearing Memo No. 4618 dated 2.5.2007, Annexure-10 and the instant charge-sheet under Resolution of the State Government bearing Memo No. 4668 dated 3.5.2007, Annexure-11 was also served on him. Having received the charge-sheet, Petitioner again requested the authorities under letter dated 16.5.2007 and 25.6.2007 to make available the order where under he granted renewal of arms licence of Sri Subodh Rai Sharma after lapse of five years without the approval of the District Magistrate. The two letters are addressed to the Secretary of the Personnel and Administrative Reforms Department of the State Government as also to the District Magistrate, Begusarai and is contained in Annexures-14 and 15 to the writ petition. It is further submitted on behalf of the Petitioner that in response to his request to make available the order passed by the Petitioner granting renewal of arms licence of Sri

Subodh Rai Sharma was not made available to the Petitioner. The District Magistrate, Begusarai under letter No. 690 dated 17.3.2007, Annexure-13, however, categorically stated that the file dealing with the renewal of arms licence of Sri Subodh Rai Sharma is not available in the Collectorate.

4. Petitioner having received the reply dated 13.7.2007, Annexure-16 from the District Magistrate stating that the file concerning the renewal of arms licence of Sri Subodh Rai Sharma is not available, submitted his written defence to the Enquiry Officer, which is dated 24.8.2007, Annexure-17.

5. It appears from perusal of the written defence filed by the Petitioner in the enquiry proceeding that he again asserted before the Enquiry Officer that he had granted renewal of the arms licence of Sri Subodh Rai Sharma with the approval of the then District Magistrate, Begusarai as the licence of Sri Subodh Rai Sharma was issued from Vaishali Collectorate and was presented before him for renewal after the same had lapsed for a period of five years and in terms of the provisions of the Arms Act and the Rules framed there under, renewal of such licence could only be granted with the approval of the District Magistrate. The Enquiry Officer submitted report dated 19.9.2007, Annexure-18 wherefrom it appears that the Enquiry Officer found proved the charge(s) levelled against the Petitioner that he granted renewal of arms licence of Sri Subodh Rai Sharma after the licence remained lapsed for 5 years without the approval of the District Magistrate. Perusal of the entire enquiry report, Annexure-18, however, does not indicate that in support of such finding the Enquiry Officer either relied on the order passed by the Petitioner granting renewal of arms licence of Sri Subodh Rai Sharma or on the deposition of the District Magistrate or any of the subordinate staff serving in the Collectorate at the relevant time or of Sri Subodh Rai Sharma. Without placing reliance on either the order granting renewal or the deposition of the then District Magistrate and other subordinate staff, it could not have been found by the Enquiry Officer that arms licence of Sri Subodh Rai Sharma was renewed by the Petitioner after the licence had lapsed for five years without the approval of the District Magistrate. For recording such finding, in my opinion, the Enquiry Officer was either to rely on the order by which Sri Subodh Rai Sharma was allowed renewal of arms licence by the Petitioner or over the deposition of the then District Magistrate and his subordinates recorded in support of the charge. The Enquiry Officer could have established the charge only with reference to the order granting renewal or deposition of the then District Magistrate and his subordinates. From the enquiry report dated 19.9.2007, Annexure-18, it appears that neither the order was perused by the Enquiry Officer nor the District Magistrate was examined in support of the charge. Findings recorded in the enquiry report are mere conjectures devoid of any admissible material.

6. In the circumstances, finding recorded by the Enquiry Officer that the charge levelled against the Petitioner that he allowed renewal of arms licence to Sri Subodh

Rai Sharma without the approval of the District Magistrate, in my opinion, has not been proved. Once the charge is not proved, the punishment imposed under the impugned Resolution of the State Government bearing Memo No. 1148 dated 30.1.2008, Annexure-1 is without any basis and is found vitiated infracting Article 14 of the Constitution of India, which is, accordingly, quashed.

7. The allegation being of 15.10.1999, which is required to be proved with reference to the order renewing the arms licence of Sri Subodh Rai Sharma, which is not available, as would appear from the report of the District Magistrate, dated 17.3.2007, Annexure-13, no useful purpose will be served by directing the authorities to continue with the proceeding against the Petitioner. Overt act alleged against the Petitioner being that of 15.10.1999, which was discovered by the authorities under letter No. 593/C dated 15.3.2001, Annexure-2 when the Petitioner was not placed under suspension, in the circumstances, there was absolutely no justification for placing the Petitioner under suspension under Resolution dated 2.5.2007, Annexure-10 after he filed earlier writ petition on 1.3.2007. The writ petition is, accordingly, allowed.