

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6813 of 2008

=====

Amarjit Paswan son of Late Prakash Paswan resident of village Okanama P.O. Meghi P.S. Deepnagar, Circle Bihar Sharif District Nalanda at Bihar Sharif.

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate cum Collector, District Nalanda at Bihar Sharif.
3. The Addl. Collector (Naxal)-cum-Senior Officer (Incharge) District General Branch, Nalanda at Bihar Sharif
4. The Superintendent of Police, Nalanda at Bihar Sharif.
5. The Circle Officer cum Conducting Officer, Bihar Sharif Circle Bihar Sharif, District Nalanda.
6. The Officer-in-charge, Deepnagar Police Station, Deepnagar District Nalanda at Bihar Sharif.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar

For the Respondent/s : AC to GA-4

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-03-2015

Heard Sri Mithilesh Kumar, learned counsel for the petitioner and learned A.C. to Govt. Advocate – 4.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 20-03-2006, as contained in **Annexure ‘3’** to the writ petition issued by the respondent no. 3/Addl. Collector (Naxal)-cum-Senior Officer (Incharge) District General Branch, Nalanda at Bihar Sharif. By the said order, the petitioner has been imposed punishment of forfeiture of one increment with cumulative effect.

Short fact of the case is that the petitioner, who was



working as Chowkidar (7/7) in Deepnagar Police Station within the district of Nalanda, was put under-suspension by an order dated 13-10-2004 (**Annexure '1'**) on an allegation of dereliction of duty. Subsequently, a departmental proceeding was initiated and the Circle Officer was appointed as conducting officer. After conducting enquiry, the conducting officer submitted its report recommending for recording 'warning and also censure' in the A.C.R. of the petitioner and recommended for withdrawal of the suspension order. After the report was submitted by the conducting officer, the impugned order i.e. **Annexure '3'** has been issued, whereby, punishment , as indicated, has been imposed.

Learned counsel for the petitioner, assailing the order of punishment, firstly has argued that though, suspension order has been withdrawn by the disciplinary authority and punishment of forfeiture of one increment with cumulative effect was passed, nothing was indicated regarding the period spent by the petitioner during suspension. It has been pleaded that after the order of the disciplinary authority, the petitioner approached the authority concerned regarding payment of the salary for the suspension period, however; till date no payment has been made. Learned counsel for the petitioner further submits that order of punishment is itself liable to be set aside on the



ground of violation of principle of natural justice and also in violation of settled principles of the departmental proceeding. He submits that on perusal of **Annexure '3'** itself, it is evident that after receipt of the enquiry report, which suggested for imposing minor punishment, the disciplinary authority after obtaining command from the Superintendent of Police has inflicted major punishment without assigning any reason for differing with the enquiry report, nor second show cause notice was issued to the petitioner to justify the report of the conducting officer regarding recommendation of the minor punishment. On this ground alone, he submits that order impugned is liable to be set aside.

Learned State counsel though, has opposed the writ petition vehemently and referred averments made in the counter affidavit, he was not in a position to satisfy as to whether after receipt of the enquiry report whether the petitioner was noticed to explain on proposed major punishment. He submits that the petitioner remained absent from the duty unauthorisedly which was serious misconduct on the part of the petitioner and in the departmental proceeding, though he took the plea of ailment, no proper evident was brought on record to justify his absence and as such, learned counsel for the State justifies the order of the disciplinary authority.



Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that in order of punishment, nothing has been indicated in respect of period undergone by the petitioner during suspension. Once the petitioner was put under-suspension and departmental proceeding was initiated, which concluded, vide **Annexure '3'** and suspension order was withdrawn, it was mandatorily required on the part of the disciplinary authority to specify regarding period of suspension. Since nothing has been indicated by the disciplinary authority, it can be inferred that no adverse order against the petitioner was passed regarding the suspension period and as such, the petitioner is entitled to get full salary for the period of suspension. Regarding the major punishment imposed by the disciplinary authority, on perusal of the order itself, it is evident that after receipt of the enquiry report, the petitioner was not noticed, whereas, the report of the conducting officer, which is contained in **Annexure 'A/3'** to the counter affidavit filed on behalf respondent no. 4 & 6, makes it clear that the conducting officer had recommended for minor punishment. Once the recommendation was made by the conducting officer for imposing minor punishment, the disciplinary authority though was competent to impose major punishment, at the same time, he was required to give notice to the

petitioner for imposing major punishment. From the order itself, it is evident that no notice was issued.

Accordingly, the Court is of the opinion that order of punishment is in the teeth of Article 14 and 16 of the Constitution of India and as such, order dated 20-03-2006 passed by the respondent no. 3/Addl. Collector (Naxal)-cum-Senior Officer (Incharge) District General Branch, Nalanda at Biharsharif i.e. Annexure '3' to the writ petition is, hereby, set aside. The Respondents are directed to pay salary to the petitioner for suspension period after adjusting the amount (subsistence allowance) paid during the suspension period within a period of three months from the date of receipt/production of copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J.)

Anay/-

U			
---	--	--	--