

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1133 of 2016

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Ramchandra Mandal, Son of late Uchit Mandal, Resident of Village- + PO- Rani Parti, P.S.- Rotra, District Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Director General of Police, Govt. of Bihar, Old Secretariat, Patna.
3. D.I.G. of Police, Military Police, Central Zone, Patna.
4. Commandant, B.M.P. -3, Bodh Gaya, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad
Mr. Sanjiv Kumar

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-07-2016

Heard Mr. Ram Hriday Prasad, learned counsel appearing for the petitioner and Mr. Prabhu Narayan Sharma, learned Assisting Counsel to the Advocate General for the State.

With the consent of the parties this matter has been heard with a view to its final disposal at the stage of admission itself.

The petitioner prays for quashing of the order dated 30.6.2015 passed by the Commandant, BMP-3, Bodh Gaya, whereby his increment has been stopped for six months which is equivalent to award of one 'black mark'. The petitioner has also questioned the appellate order passed by the Deputy Inspector General (Military Police), Central Zone, Patna dated 7.9.2015, whereby the appeal preferred by the petitioner has been dismissed.

Copies of the order of the disciplinary authority dated 30.6.2015 and the order of the appellate authority dated 7.9.2015 are impugned at Annexures 3 and 5 respectively to the writ petition.

Facts of the case briefly stated is that the petitioner was appointed as a Constable on 19.3.1976 and was promoted to the post of Havildar in December, 2001. The petitioner was granted further promotion to the post of Sub-Inspector of Police (Arms) and posted at BMP-3, Bodh Gaya in the year 2012. The proceeding in question was initiated, inter alia, on charge that certain orders regarding an enquiry into the citizenship of one Hem Chandra Jha, was not carried out by the petitioner in its entirety. The charge bearing Memo No.609 dated 7.3.2015 is enclosed at Annexure-1 and which mentions that in order to verify the correctness of the residential address given by the said Hem Chandra Jha, Sub Inspector (since retired), the petitioner was entrusted with the task of:

- (a) ensuring the presence of the said Hem Chandra Jha before the Commandant;
- (b) preparing proposal for enquiry by the Superintendent of Police on the residential address of Hem Chandra Jha; and
- (c) preparing proposal for information from Treasury regarding the pension drawn by Sri Jha.

The petitioner though did prepare draft proposal for two of the three enquiry but failed to prepare the draft to be addressed to

the Treasury Officer and which, according to the Commandant who is the disciplinary authority of the petitioner, was with a view to provide unjust gain to the said Hem Chandra Jha.

Following the charge memo present at Annexure-1 that the enquiry was held and the Senior Deputy Superintendent of Police was appointed as the enquiry officer who enquired into the matter and submitted his report on 31.5.2015 (Annexure-2) exonerating the petitioner of all the charges. The Commandant, Military Police, Bodh Gaya vide order bearing Memo No.1631 dated 30.6.2015 disagreeing with the finding of the enquiry officer has held the charges to be proved and awarded the punishment of stoppage of increment for six months which is equivalent to one 'black mark'. The order of the disciplinary authority impugned at Annexure-3 has been affirmed by the appellate authority being the Deputy Inspector General (Military Police) who vide Memo No.989 dated 7.9.2015 impugned at Annexure-5 has dismissed the appeal preferred by the petitioner and thus affirming the order of punishment. The petitioner being aggrieved is before this Court.

I have heard learned counsel for the parties and I have perused the records.

Although Mr. Prasad, learned counsel appearing for the petitioner while addressing the Court has argued extensively on the merits of the charge but in my opinion, the writ petition is fit to be



allowed on the limited count that once the disciplinary authority has chosen to disagree with the finding of the enquiry officer, then he should have recorded tentative reasons for such disagreement and afforded an opportunity to the petitioner to respond to the same. That the enquiry Officer had exonerated the petitioner of the charges, obviously there was no occasion for the petitioner to prefer any representation.

Though learned counsel for the State has laboured hard to justify the impugned order by referring to Clause-6 of Appendix 49 of the Bihar Police Manual and with reference to Annexure-B to the supplementary counter affidavit for submitting that an opportunity was granted to the petitioner but then Annexure-B is by itself enough to allow the writ petition for it though seeks an explanation from the petitioner but the reasons for seeking such explanation, is missing. As I have observed earlier that since the enquiry officer had already exonerated the petitioner, until such time that the petitioner was made aware as to the reasons for disagreement crossing the mind of the disciplinary authority, there could only be a formal reiteration of innocence by the petitioner. Even Clause-6 of Appendix 49 does not help the case of the respondents in any manner for it yet requires the disciplinary authority to record his tentative reasons before proceeding to pass the order of penalty.

Law is well settled in this regard and reference is made to

the celebrated judgment of the Supreme Court rendered in the case of **Punjab National Bank vs. Kunj Behari Misra**) since reported in **(1998) 7 SCC page 84** more particularly paragraph 19 thereof.

Undisputedly this essential obligation has been overlooked by the disciplinary authority and for the same reason its affirmation by the appellate authority also becomes unsustainable. The matter gains seriousness because in terms of rule 828 of the Bihar Police Manual, a punishment of ‘black mark’ provided under rule 824, is held to be a major penalty.

For the reasons aforementioned the order of the disciplinary authority bearing Memo No.1631 dated 30.6.2015 impugned at Annexure-3 together with the order of the appellate authority bearing Memo No.989 dated 7.9.2015 impugned at Annexure-5 cannot be upheld and are accordingly set aside.

This order would not preclude the disciplinary authority, if so advised, to proceed afresh but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.08.2016
Transmission Date	NA