

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2352 of 2014

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1. Dharmmlal Baitha S/O Late Deodhari Baitha Resident of Village - Basauli, P.O. - Basauli, P.S. - Karhani, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, Muzaffarpur
4. The Sub-Divisional Officer, East, Muzaffarpur
5. The Addl. Collector-Cum-Conducting Officer, Muzaffarpur
6. The Circle Officer, Aurai, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.K.Jain, Adv.
Mr. Pradeep Kumar Sinha, Adv.
Mr. Punam Srivastava, Adv.

For the Respondent/s : Mr. V. Prasad, GP-18

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-09-2016

Heard Mr. R.K. Jain, learned counsel for the petitioner and Mr. Sanjay Kumar Ojha, A.C. to G.P.7 for the State.

In the nature of order this court proposes to pass, it will not require this Court to delve into the merits of the case.

The petitioner is aggrieved by the order bearing memo No.900/Estt. dated 6.9.2011 impugned at Annexure-6, passed by the District Magistrate, Muzaffarpur whereby the petitioner has been imposed a penalty of withholding of two annual increments with non-cumulative effect along with warning and which punishment is accompanied with an order of reduction of his pay and allowance to the subsistence allowance drawn by him during the suspension period. The order has been affirmed in appeal by the Commissioner, Tirhut Division vide order passed 11.1.2013 impugned at Annexure-7.



Facts briefly stated is that on a report given by the Circle Officer to the Sub-Divisional Officer reporting absence of the petitioner on 29.1.2011 without due permission that he was suspended initially on 31.1.2011 vide Annexure-2 under the orders of the District Magistrate, Muzaffarpur and which was followed by a service of charge memo vide Annexure-3 listing two charges against the petitioner of unauthorized absence and of being present in the camp office and distributing cheques to the beneficiaries under the Family Benefits Scheme.

The District Magistrate by a subsequent order bearing Memo No.410 dated 4.4.2011 appointed the Additional Collector as the Conducting Officer and the Sub-Divisional Officer, East Muzaffarpur was appointed as a Presenting Officer. The report of the Enquiry Officer is present at Annexure-5 and the petitioner has been exonerated of all charges by the Additional Collector-cum-Conducting Officer, Muzaffarpur. The District Magistrate, Muzaffarpur without indicating his reasons for disagreement and without seeking a show cause from the petitioner thereon, has simply proceeded to impose the penalty in question vide order dated 6.9.2011 impugned at Annexure-6 and which order of penalty passed by the District Magistrate, Muzaffarpur has been affirmed by the Commissioner, Tirhut Division vide his order dated 11.1.2013 impugned at Annexure-7. The petitioner being aggrieved is before this

court.

The following issues have been raised by Mr. Jain learned counsel for the petitioner to question the impugned orders namely:

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- (a) Even when the District Magistrate who is the Disciplinary Authority has chosen to disagree with the findings of the Enquiry Officer yet he has proceeded to impose penalty under Section 14 without following the procedure provided under Rule 18(2) of the Bihar Government Servant Rules (hereinafter referred to as 'the Rules') requiring the Disciplinary Authority to record his reasons for disagreement on the findings of the Enquiry Officer and service of the same on the delinquent as mandated under Clause 18(3) before he proceeds to record a finding on the disciplinary proceedings; and
- (b) The order of restriction of pay and allowance to the subsistence allowance drawn by the petitioner is not preceded with a show cause.

Although a counter affidavit has been filed supporting the impugned orders and Mr. Ojha learned State counsel endeavours to support the impugned orders in reference thereto, but in my opinion the attempt would be futile for the issue raised by Mr. Jain is uncontested. Neither the Disciplinary Authority has adhered to the mandatory requirement present at Rule 18(2) and 18(3) of 'the Rules'

nor the order of restriction of pay and allowance to the subsistence allowance drawn by the petitioner during the suspension period is preceded by a show cause.

In the uncontested circumstances discussed above, the orders impugned are rendered illegal and cannot be upheld.

In result, the order dated 6.9.2011 passed by the District Magistrate, Muzaffarpur impugned at Annexure-6 together with the order dated 11.1.2013 of the Commissioner, Tirhut Division, Muzaffarpur impugned at Annexure-7 are quashed and set aside. The matter is remitted back to the District Magistrate, Muzaffarpur to proceed in accordance with law and since it is stated that the petitioner stands superannuated with effect from 31.8.2012, the District Magistrate, Muzaffarpur would be well advised to conclude the proceedings within a maximum period of 3 months from the date of receipt/production of a copy of this order, if he intends to initiate any proceeding. In case the proceedings in question are not concluded by the District Magistrate, Muzaffarpur within the period stipulated above, the petitioner would be entitled to the consequential benefits as admissible to him.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

AFR	
CAV DATE	
Uploading Date	17.9.16
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