

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.742 of 2011

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1. Mina Devi, Wife of late Sadanand Mandal (Original petitioner)
 2. Mukesh Kumar, Son of late Sadanand Mandal.
 3. Rakesh Kumar, Son of late Sadanand Mandal.

All are residents of Village- Khajuria, P.O. - Ghatwari, P.S.- Dharahara,
District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home (Police) Department, Govt. of Bihar, Patna.
3. The Director General -cum- Inspector General of Police, Bihar, Patna.
4. The Inspector General of Police, Magadh Range, Gaya, District- Gaya.
5. The Deputy Inspector General of Police, Magadh Range, Gaya District- Gaya.
6. The Superintendent of Police, Aurangabad, District- Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shanti Pratap

For the Respondent/s : Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-08-2016

Although it is stated at the Bar that a counter affidavit was filed but the report of the office is otherwise. Mr. Shailesh Kumar, learned Assisting Counsel to Government Pleader No.5 in the circumstances has handed over a plain copy of the counter affidavit. Let it be maintained on the record.

Heard Mr. Shanti Pratap, learned counsel appearing for the petitioners and Mr. Shailesh Kumar, learned Assisting Counsel to Government Pleader No.5 for the State.

The delinquent petitioner has deceased and is substituted by the petitioners, who are aggrieved by the order dated



13.1.2009 passed by the Superintendent of Police, Aurangabad as contained in Annexure-1, whereby the deceased petitioner has been visited with penalty of stoppage of one annual increment with non-cumulative effect which is equivalent to award of two black-marks. Apart therefrom the pay and allowances of the deceased petitioner for the suspension period has been restricted to the subsistence allowance drawn by him and the period has been adjusted against his earned leave.

The charge memo bearing Memo No.1003 dated 24.4.2007 is at Annexure-5 and charges the deceased petitioner of not attending the court despite order being issued from the office of the Superintendent of Police in respect of a criminal case instituted against the deceased petitioner arising from Kotwali P.S. Case No.64 of 1992 for the offences punishable under section 302 and other sections of the Indian Penal Code and section 27 of the Arms Act. An enquiry was held and the Disciplinary Authority vide order passed on 13.1.2009 has imposed the penalty aforementioned which order has been affirmed by the Appellate Authority vide Annexure-2. The petitioner feeling aggrieved is before this Court.

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

The only charge made against the deceased petitioner



as reflecting from the charge memo present at Annexure-5 is, that he did not obey the direction of the Superintendent of Police to attend the court in the pending sessions trial. The Superintendent of Police considering the conduct of the deceased petitioner to delay the trial has initiated a proceeding which is concluded in the impugned orders.

The reasons for not attending the court is reflected from the reply filed by the deceased petitioner before the Conducting Officer, a copy of which is present at Annexure-7 and he submits that his delayed attendance before the trial court was because he suffered jaundice and when he recovered from jaundice he had to undergo gall bladder operation and thereafter he suffered a motorcycle accident resulting in fracture. Although the reason given by the petitioner appear rather sound but unfortunately it is not accompanied with supporting evidence. There is nothing on the record of the proceedings which would support the reasons given by the deceased petitioner for not attending the trial court. Although an argument has been advanced by Mr. Shanti Pratap, learned counsel for the petitioner that a copy of the enquiry report was not given to the petitioner but in my opinion even the service of enquiry report would not have improved the situation for the petitioner nor its non-service has caused him prejudice. The very fact that the

reasons assigned by the deceased petitioner for not attending the trial court is not supported with evidence, even a service of the enquiry report would not have improved the situation for the petitioner.

In the circumstances so reflecting I find no infirmity in the order of the Disciplinary Authority as affirmed by the Appellate Authority in so far as the penalty of stoppage of increment has been inflicted on the petitioner who has since deceased and is substituted by his legal heirs.

Having upheld the penalty imposed on the deceased petitioner under the Disciplinary Rules, this Court is not satisfied by the second penalty imposed by the Superintendent of Police restricting the pay and allowance of the deceased petitioner to the subsistence allowance drawn during the suspension period. Undisputedly a restriction of pay and allowance to the subsistence allowance drawn during the suspension period is not a penalty provided under the Disciplinary Rules. In so far as the present case is concerned, rule 824 of the Bihar Police Manual is the relevant provision but which conceives of no such penalty.

Despite the legal position on the issue of restriction of pay and allowance to the subsistence allowance drawn during the suspension period having been settled yet such orders continue to



plague this Court. An initiation of a departmental proceeding though vests the Disciplinary Authority to impose any penalty on a delinquent as envisaged under the Disciplinary Rules but in absence of any penalty being provided under the Disciplinary Rules to restrict the pay and allowances of a delinquent to the subsistence allowance drawn during the suspension period, such order cannot form part of a disciplinary proceeding unless the delinquent is put on notice.

This exercise has not been done and it is merely by virtue of proceeding in question that the Disciplinary Authority has proceeded to also impose a penalty on the deceased petitioner in restriction of his pay and allowances to the subsistence allowance drawn by him during the suspension period. That the petitioner has since deceased I am also not persuaded for remand of the matter for a consideration of the issue.

In result, the order passed by the Disciplinary Authority dated 13.1.2009 as affirmed by the Appellate Authority vide order passed on 12.7.2010 in so far as it restricts the pay and allowances of the deceased petitioner to the subsistence allowance drawn by him during the suspension period cannot be upheld and is accordingly set aside. The order imposing penalty is modified to the aforementioned extent.

The writ petition is allowed to the aforementioned extent. The consequences so resulting should be provided to the legal heirs of the deceased petitioner within a period of three months from the date of receipt/production of a copy of this judgment.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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