

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.695 of 2013

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Om Prakash Sah son of Late Jawahar Prasad Sah Resident of Village- Barahiya-
Mubarakpur, P.O.- Mubarakpur, Via- Ekma, P.S.- Manjhi, District- Saran

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Director General, Bihar Home Guard Chhajubagh, Patna
3. The Inspector General, Bihar Home Guard Chhajubagh, Patna
4. The Divisional Commandant, Home Guard, Bihar, Patna
5. The District Commandant Home Guard, Ara, Bhojpur
6. The District Commandant, Home Guard, Chapra

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. SHASHI SHEKHAR TIWARY, Advocate

For the Respondent/s : Mr. Manoj Kumar, A.C. to SC-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-08-2016

Heard Mr. Shashi Shekhar Tiwary, learned counsel for the
petitioner and Mr. Manoj Kumar, learned Assisting Counsel to SC-12.

The petitioner is aggrieved by the order bearing Memo No.
568 dated 17.2.2012 passed by the Deputy Commandant General,
Bihar Home Guard, Patna whereby he has dismissed the appeal
preferred by the petitioner thus confirming the order of penalty passed
by the Commandant, Bihar Home Guard, Patna bearing Memo No.
429 dated 18.2.2011 impugned at Annexure-4 whereby the petitioner
has been visited with the penalty of stoppage of increment for one
year which is held equivalent to award of two black marks and his
pay and allowances for the period of suspension has been restricted to

the subsistence allowance.



In the nature of the order which this Court proposes to pass it would be required to delve deep into the matter. Suffice it to say that the petitioner at the relevant time was holding the post of Company Commander and posted at the head office. He was served with a charge sheet bearing Memo No. 1605 dated 19.7.2007 listing three charges i.e. (a) unauthorized absence; (b) writing letters to the Superintendent of Police, the District Magistrate and other superior officers containing abuse and use of foul language against superiors; and; (c) misappropriating the ration to his personal use. The charge memo also appoints the Divisional Commandant as the Enquiry Officer and a copy was endorsed to him. The petitioner responded to the show cause denying the charges. An enquiry was held and the report was submitted before the Commandant who has proceeded to pass the order of penalty. The petitioner filed a statutory appeal vide Annexure-5 and which has been rejected vide Annexure-6. The petitioner being aggrieved is before this Court. In between, the petitioner has superannuated on 28.2.2013.

Mr. Shashi Shekhar Tiwary, learned counsel for the petitioner has questioned the impugned order on the following grounds:

(a). Although a disciplinary proceeding for



enquiry into the allegations was initiated by service of charge memo vide Annexure-1 and which also proceeds to appoint the Enquiry Officer but no presenting officer was appointed and which is fatal;

- (b). Although the petitioner participated in the enquiry but a copy of the report thereof, was not served upon him;
- (c). There is no show cause against a proposed penalty nor any hearing was granted by the disciplinary authority;
- (d) Rule 834 of the Bihar Police Manual puts a restriction on award of Black marks except in cases of moral turpitude and which is not established in the present case;
- (e) Although the impugned order restricts the pay and allowances to the subsistence allowances drawn by the petitioner during the suspension period but no show cause against such penalty was issued;
- (f) The order passed by the disciplinary authority and the appellate authority though discusses the enquiry report but does not deal with the explanation given by the petitioner.

The arguments advanced by Mr. Tiwary, has been contested by Mr. Manoj Kumar learned A.C. to S.C.-12 and who proceeds to



defend the procedural infirmity by making reference to Rule 828(c) of the Bihar Police Manual and to submit that there is no requirement of holding a formal enquiry in case of forfeiture of increments and the matter can be resolved on the basis of a show cause reply received but in my opinion any amount of explanation given by Mr. Manoj Kumar, learned counsel appearing for the State would not satisfy the situation because the procedural lapse is of such magnitude that it is uncondonable. No doubt Rule 828(c) of the Police Manual provides a procedure for forfeiture of increment but the said provision would not be applicable in the present case because the disciplinary authority in the present case has qualified the punishment of forfeiture of increment as being equivalent to award of two black marks. Rule 828(a) of the Bihar Police Manual while explaining the procedure for inflicting major punishment classifies the imposition of black mark, as a major punishment. Meaning thereby the procedure so provided under the Bihar Police Manual for inflicting a major punishment had to be followed in the present case. There is no contest that this procedure was not followed and as rightly pointed out by Mr. Tiwary once the disciplinary authority initiated a formal proceeding by service of charge memo and appointment of an Enquiry Officer, then the appointment of a Presenting Officer became mandatory for in absence of any officer presenting the case of the department before

the Enquiry Officer, a holding of departmental enquiry had no meaning. This is a serious infraction and which invalidates the proceedings at its very inception.

The second procedural infraction is the failure on the part of the disciplinary authority to serve a copy of the enquiry report on the petitioner allowing him to file his reply thereto. Admittedly this essential procedure was not followed. The order of penalty is also not sustainable because a restriction of pay and allowances to the subsistence allowances drawn by the petitioner during his service period, is not one of the punishments enumerated in Rule 824 of the Bihar Police Manual and thus in a case of restriction of pay and allowance of a delinquent to his subsistence allowance, a separate exercise is to be followed but even such mandatory exercise has not been followed in the present case.

The disciplinary proceeding in question is engulfed with such nature of procedural infraction that the orders impugned resting on such illegal enquiry process, cannot be upheld and as a consequence the order imposing penalty impugned at Annexure-4 together with the appellate order impugned at Annexure-6 are quashed and set aside.

Considering such procedural infraction as noted hereinabove which begins at the stage of service of charge sheet itself,

the entire proceedings beginning from the service of charge sheet on the petitioner until passing of the appellate order cannot be upheld and are accordingly set aside. The petitioner is held entitled to the consequential benefits in the form of refund of the amount recovered / withheld from the petitioner to be provided to him within a period of three months of receipt / production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

AFR	
CAV DATE	
Uploading Date	
Transmission Date	