

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.513 of 2015

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Ram Naresh Singh, S/o Late Shyam Hari Singh, Resident of Nandlal Chhapra, P.S.
Ram Krishna Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the D.G.P., Bihar, Patna.
2. The Deputy Inspector General, Tirhut, Muzaffarpur.
3. The Senior Superintendent of Police, Muzaffarpur.
4. Shri Mithlesh Nandani Sharan, the Conducting Officer -cum- Police Inspector Minapur, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Prasad

For the Respondent/s : Mr. Kameshwar Kumarr, GP-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-10-2016

Heard Mr. Sanjay Prasad, learned counsel appearing for the petitioner and Mr. Kameshwar Kumar, learned Government Pleader No.7 for the State.

The petitioner is aggrieved by the order dated 19.1.2011 bearing Memo No.168 of the Senior Superintendent of Police, Muzaffarpur, a copy of which is impugned at Annexure-3, whereby the petitioner has been imposed penalty of censure and a period of 367 days has been treated to be extraordinary leave which order has been confirmed by the Deputy Inspector General of Police, Tirhut Area, Muzaffarpur vide order bearing Memo No.657 dated 10.6.2011 impugned at Annexure-4 as well as by the Director General of Police vide order bearing Memo No.5206 dated 18.11.2013 impugned at Annexures 5.



The undisputed facts of the case is that the petitioner proceeded on earned leave of 60 days with effect from 14.12.2007 and he was supposed to report back on 14.2.2008 but in between the petitioner claims to have fallen sick on 13.2.2008 and was undergoing treatment in Patna Medical College and Hospital with effect from 13.2.2008. While undergoing such treatment that the petitioner suffered tuberculosis and went into such treatment with the said hospital. The treatment continued until 16.2.2009 when the doctor Incharge reported him fit to join duty and the petitioner joined thereafter on 18.2.2009. The petitioner was thus under treatment from 13.2.2008 to 16.2.2009 with the Patna Medical College and Hospital.

In between, the proceedings in question, was initiated by the department treating the petitioner on unauthorized leave and before it could translate in a formal order, the petitioner superannuated on 30.6.2010. It is thereafter that the punishment order has been passed by the Senior Superintendent of Police, Muzaffarpur vide order bearing Memo No.168 dated 19.1.2011 impugned at Annexure-3 which order has been affirmed by the Deputy Inspector General of Police, Tirhut Division, Muzaffarpur vide order bearing Memo No.657 dated 10.6.2011 impugned at Annexure-4 and by the Director General of Police vide order bearing Memo No.5206 dated 18.11.2013 impugned at Annexure-5.



While it is the specific stand of Mr. Sanjay Prasad, learned counsel appearing for the petitioner that the entire proceeding has been conducted behind the back of the petitioner, this argument is contested by Mr. Kameshwar Kumar, learned State Counsel to submit that due notice was given to the petitioner who did not choose to contest the proceedings.

A counter affidavit is on record which though encloses the notice dated 7.3.2008 at Annexure 'B' and 2.12.2008 at Annexure 'C' i.e. during the period the petitioner was undergoing treatment but thereafter there is nothing on record of the counter affidavit to show as regarding service of any notice on the initiation of formal departmental proceeding.

Be that as it may, the fact remains that the proceedings whatsoever did not culminate into any order until retirement of the petitioner on 30.6.2010 and it is thereafter that the orders have been passed treating the period as extraordinary leave and an order of censure has been passed.

Mr. Sanjay Prasad, learned counsel appearing on behalf of the petitioner has referred to rule 202 of the Bihar Service Code along with the Government decision present thereunder bearing No.F1-706/61/2796F dated 3.12.1961 to submit that while a patient of tuberculosis is entitled to leave with half average pay up to 12 months, it is his argument that even if the respondents have

proceeded to treat this period as extraordinary leave period, they are duty bound to pay at least half average pay to the petitioner for the said period.

Undisputedly there is no such stipulation in the punishment order as regarding withholding of salary save and except that the period has to be treated as extraordinary leave. Mr. Kameshwar Kumar, learned State Counsel submits that no such prayer has been made by the petitioner before the department concerned.

Having heard learned counsel for the parties and considering that the orders impugned do not stipulate withholding of salary of the petitioner for the period of his absence rather the period has been treated as extraordinary leave, the concerned respondents are also duty bound to consider the prayer of the petitioner for payment of admissible salary in view of the stipulation present in rule 202 of the Bihar Service Code and the Government decision present thereunder.

Since the orders impugned do not prejudice the petitioner financially nor does it affect the pension of the petitioner I do not deem it necessary to quash the same. Undisputedly the petitioner was on leave for the period 14.12.2007 until he joined duty on 18.2.2009 and the period in question has been treated as extraordinary leave. According to Mr. Sanjay Prasad, learned

counsel for the petitioner, in view of rule 202 of the Bihar Service Code, the petitioner is entitled to 50% average pay but then no such grievance has been raised by the petitioner as submitted by learned State Counsel.

In the circumstances discussed, the writ petition is disposed of with the liberty to the petitioner to raise his grievance before the Senior Superintendent of Police, Muzaffarpur and who shall consider and dispose of the same within a period of three months from date of receipt/production of a copy of this order.

The writ is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10-11-2016
Transmission Date	NA