

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11449 of 2016

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Lalan Prasad Gupta son of Sri Ramchandra Sah, Resident of Village- Sunder Patti,
Police Station Pakaridayal, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Military Police, Patna.
4. The Deputy Inspector General of Police, Military Police (Central Division), Patna.
5. The Commandant, Bihar Military Police (B.M.P.)-16, Phulwarisharif, Patna.
6. The Enquiry Officer-cum-Police Inspector, B.M.P.-16, Phulwarisharif, Patna.

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Pramod Kumar, Advocate

For the Respondent/s : Mr. ARVIND UJJWAL, SC-4

Mr. Maruth Nath Roy, A.C. to SC-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-09-2016

Heard Mr. Pramod Kumar, learned counsel for the
petitioner and Mr. Maruth Nath Roy, Assisting Counsel to SC-4.

A counter affidavit has been filed today. Let it be kept on
record.

The petitioner, an Ex-constable posted in the BMP-16 is
aggrieved by the order bearing Memo No. 93 dated 17.5.2015 passed
by the Commandant, BMP-16 impugned at Annexure-6 whereby a
penalty of withholding of increments for six months has been passed
in a disciplinary proceedings initiated and which has been held
equivalent to one black mark. The punishment order also envisages
that it will not affect the future increments. The order passed by the

Commandant impugned at Annexure-6 has been affirmed by the appellate authority i.e. the Deputy Inspector General of Police vide Memo No. 884 dated 11.8.2015 who has dismissed the appeal impugned at Annexure-8.

The argument advanced by Mr. Pramod Kumar to contest the impugned order is with reference to the provision underlying Rule 18(2) of the Rules and to submit that for a charge of unauthorized absence, the disciplinary proceeding in question was initiated and an enquiry report was submitted by the Conducting Officer present at Annexure-5 exonerating the petitioner of the charges. He submits that although the disciplinary authority i.e. the Commandant has disagreed with the finding of the Conducting Officer to pass order of punishment but without ensuring compliance with the requirement of Rule 18(2) of the Bihar Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') as amended from time to time which mandates a service of note of disagreement by the disciplinary authority on differing with the finding of the Conducting Officer. He submits that the issue being raised by the petitioner before the appellate authority, it has had no effect and the appellate authority has mechanically affirmed the order of the disciplinary authority.

Mr. Roy, learned counsel for the State while contesting the arguments would not be in a position to dispute the factual position except that he submits that the petitioner is a habitual defaulter and

overstays on leave.

I have heard learned counsel for the parties and I have perused the records. The facts are not in dispute. The petitioner having been proceeded for unauthorized absence, the enquiry report is at Annexure-5 and exonerates him from the charges. Had it been a case of withholding of increments simplicitor perhaps the stand taken by the State would merit consideration but considering that the disciplinary authority has not only awarded the punishment of withholding of increments for next six months, rather he has proceeded to qualify the punishment to be equivalent to award of one black mark which is held to be a major penalty under Rule 828(1)(a) of the Bihar Police Manual read alongside Rule 825 thereof, the Commandant was bound by the procedure provided under Rule 18 of the Rules in view of the stipulation present at Rule-824A of the Bihar Police Manual which gives recognition to the Classification Rules framed for the government servants including the officers in the subordinate services. Since the Civil Services Classification, Control and Appeal Rules, 1930 as well as the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 stand superseded and replaced by the Rules of 2005 referred to above, as manifest from Rule 32 thereof, the provision of Rule 18 would become applicable to the present case and since it is a case of award of major penalty, the Commandant being the disciplinary authority was bound under the

provisions of Rule 18(2) of 'the Rules' which requires him to serve upon the delinquent note of disagreement while supplying the copy of the enquiry report enabling the delinquent to respond thereto.

In my opinion, until such procedure was complied as provided under Rule 18(2) by giving reasonable opportunity to the delinquent petitioner to contest the disagreement note, he could not have proceeded with the award of penalty.

For the reasons and discussions aforementioned, the order of penalty dated 17.5.2015 impugned at Annexure-6 passed by the Commandant together with the order of the appellate authority dated 11.8.2015 impugned at Annexure-8 cannot be upheld and are accordingly quashed and set aside.

This order, however, would not preclude the disciplinary authority to proceed in the matter but in accordance with law and in compliance of the provisions underlying Rule 18(2) of the Rules.

The writ petition is allowed.

(Jyoti Saran, J)

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