

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10433 of 2008**

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Arun Singh @ Arun Kr.Singh S/o late Gaya Singh, R/o village and Post-Lohra, P.S. Harnaut, District Nalanda

.... .... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Home, Bihar, Patna.
2. The Inspector General of Police, Bihar, Patna
3. The Deputy Inspector General of Police, Central Range, Bihar, Patna
4. The Senior Superintendent of Police, Patna
5. The Inspector of Police-cum-Officer Incharge of Malsalami, P.S. Patna
6. The Superintendent of Police, Bettiah

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Shashi Dhar Jha  
Mr. Sunil Kumar No.5

For the Respondent/s : None

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**ORAL JUDGMENT**

4      16-01-2017                      Heard Mr. Shashi Dhar Jha, learned counsel for the petitioner. None appears on behalf of the State.

The petitioner is aggrieved by the order dated 22.6.2007 passed by the Senior Superintendent of Police, Patna in Departmental Proceeding no. 245/04 whereby the petitioner has been imposed a penalty of reversion on the post of Havildar in the basic scale of Rs. 3,250/- for a period of three years together with a forfeiture of salary for the period he was found absconding that is from 21.11.2003 to 12.9.2005 which comes to 661 days. By the same order, the period in question has been treated as earned leave and the suspension period has been adjusted as half earned leave.



The order has been affirmed by the Deputy Inspector General of Police, Central Range, Patna, when the appeal of the petitioner has been dismissed. The orders of the Disciplinary Authority and the Appellate Authority are impugned as Annexures-7 and 9 respectively to the writ petition.

The issue raised by the petitioner to question the impugned order stands noted in the order of this Court recorded on 19.12.2016. It is the argument of Mr. Jha, learned counsel for the petitioner that the penalty prescribed under Rule 824 of the Bihar Police Manual neither conceives of a penalty of reversion nor enables the Disciplinary Authority to order for forfeiture of salary. Although a counter affidavit is on record but it is non-descript and it is in this view of the matter that the learned counsel for the State was asked to address the Court on the issue raised by the petitioner. The matter was adjourned to enable the State counsel to get ready on the matter but when the case is taken up, there is none to oppose the petitioner.

I have heard Mr. Jha, learned counsel for the petitioner and I have perused the records. The Disciplinary proceeding has been questioned on its procedure and the punishment imposed and whether it is in tune with the provision underlying Rule 824 of the Bihar Police Manual which categorizes



the punishment(s), which may be imposed in a departmental proceeding on a Police Officer below the rank of Inspector which includes the reduction in the rank, at Item-‘d’.

It is thus, to be seen as to whether this punishment would cover the issue raised by Mr. Jha, learned counsel for the petitioner. The other issue raised by learned counsel is that the petitioner who was posted at Bettiah, was neither informed about the date of enquiry nor he was asked to participate in the same and thus, he could not participate in the enquiry. He further submits that the petitioner also was not provided with the copy of enquiry report as stated in paragraph 23 of the writ petition nor was asked any show cause on the enquiry report.

The counter affidavit is a shoddy piece of document which does not respond to any issue raised in the writ petition except taking refuge under the record of proceedings. The records have not been produced nor there is any appearance of the State counsel. Though the order of the Disciplinary Authority is impugned as Annexure-7, it nowhere discusses whether the enquiry report was handed over to the petitioner and whether a show cause was asked on the same. Although the allegation against the petitioner is serious but he has right to defend himself and in case the notice for the enquiry has not been validly served



on the petitioner then definitely he has been prejudiced in the matter. Whether or not the petitioner would have been able to vindicate his stand, is a different matter but he definitely is entitled to an opportunity to defend himself.

Though it is the argument of Mr. Jha that no notice was received by the petitioner regarding the enquiry but the report enclosed at Annexure-6 does mention that the petitioner appeared in the enquiry on 18.6.2002, 18.2.2007 and also filed an explanation together with the medical certificates explaining his ailment during the period. As per Mr. Jha, learned counsel for the petitioner, nothing happened thereafter. The Enquiry Officer has proceeded to submit its report, a copy of which, was never handed over to the petitioner. The enquiry report has been accepted by the disciplinary authority to impose the penalty of reversion of the petitioner to the basic grade of Havildar for a period of three years together with a penalty of forfeiture of salary for the period in question.

Although it is the argument of Mr. Jha, learned counsel for the petitioner that these are not the punishment prescribed under Rule 824 of the Bihar Police Manual and that a reversion on the basic grade is not the same as a reduction in rank but the said argument is not acceptable. The moment an incumbent



is brought down in the basic grade even if within the same rank, it would yet mean a reduction. It would thus be a hyper technicality to interfere with the order on the ground that a reversion to the basic grade is not the same as reduction in rank.

It is now to be seen whether in the circumstances discussed where the enquiry report was not handed over to the petitioner thus prejudicing him to file a reply against the same before Disciplinary Authority before the final order of penalty was passed, the issue raised would merit of consideration.

While the counter affidavit does not respond thereto, the impugned order also does not mention that the copy of the enquiry report was handed over to the petitioner. A reduction in rank is a major penalty in terms of Rule 824 of the Bihar Police Manual and the Rule 824A(C) adopts the procedure prescribed under the Bihar Govt. Servants (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules 2005'), which has replaced the Civil Services (CCA) Rules, 1930 and the Bihar and Orissa, Subordinate Services, Discipline and Appeal Rule, 1935. Rule 18 of the Rules 2005 casts an obligation on the Disciplinary Authority to hand over the copy of the enquiry report to the delinquent before passing the order of penalty and which part of the duty has not been discharged.



It is the argument of Mr. Jha, learned counsel for the petitioner that Annexure-4 together with its enclosure which are present at Annexure-5 series bear sufficient explanation for the absence of the petitioner but which have not been considered either by the Enquiry Officer or the Disciplinary Authority. It is the argument of Mr. Jha, learned counsel for the petitioner that since the enquiry report has not been supplied to the petitioner before imposing of major penalty which is a mandatory exercise under the Rules, this opportunity available to the petitioner, has been forfeited.

Having heard learned counsel for the petitioner and having perused the records which do not contest the plea raised by the petitioner, I deem it proper to remit this matter to the Disciplinary Authority i.e. the Senior Superintendent of Police, Patna to consider the matter afresh from the stage of handing over of the enquiry report to the petitioner but since the enquiry report is now to the knowledge of the petitioner, he shall be filing his representation thereto within a period of four weeks from today and whereafter the Disciplinary Authority would proceed to pass a fresh order in accordance with law. For the reasons so discussed, the order of penalty impugned at Annexure-7 and the order of the Appellate Authority impugned at Annexure-9 cannot be upheld



and are accordingly, quashed and set aside.

The writ petition is allowed with the direction(s)  
aforementioned.

**(Jyoti Saran, J)**

A.I./-

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