

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4337 of 2014

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1. Shiwji Thakur Son Of Late Bhikhu Thakur Resident Of Yadav Nagar, Gali No.3,
Post - Bhagwanpur, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Special Secretary To Govt., Home (Police)
Department, Govt. Of Bihar, Patna
2. The Special Secretary To Govt., Home (Police) Department, Govt. Of Bihar,
Patna
3. The Deputy Secretary To Govt., (Police) Department, Govt. Of Bihar, Patna
4. The I.T. Manager, Home Department, Bihar, Patna
5. The Director General Of Police, Bihar, Patna.
6. The Deputy Inspector General Of Police (Headquarters), Bihar, Patna - Cum -
Conducting Officer
7. The Deputy Superintendent Of Police, Secretariat, Patna
8. The Deputy Inspector General Of Police, Darbhanga Range, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHAILENDRA KUMAR VERMA

For the Respondent/s : Mr. GA-3 V.K.SINGH

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 18-07-2017

Heard both sides.

2. The petitioner filed this writ petition for quashing the order as contained in Memo No. 2/M2 70-24/09 1840 (Annexure-12) dated 06.03.2013 passed by the Special Secretary Home (Police) Department, Govt. of Bihar, Patna whereby 10% amount pension of the petitioner has been withheld.

3. The petitioner was posted as Sub Divisional Police Officer, Benipatti, sub-division of district Madhubani and he retired on 31.07.2008. The petitioner was charged on 04.03.2010 that while



he was posted as Sub Divisional Police Officer, Benipatti Bisfi P.S. Case No. 78 of 2007 was registered on 08.06.2007 under Sections 307 and other Sections of the Indian Penal Code against Md. Jiya and others. The petitioner is alleged to have supervised the case after six months but, in the meantime he could not make any efforts to arrest the accused. The petitioner was further charged that on account of his inaction, Bisfi P.S. Case No. 48 of 2008 was registered on 23.03.2008 under Sections 302, 201 and 34 of the Indian Penal Code against Md. Jiya and others for killing of Sitaram Sahni father of the informant Shatrughan Sahni of Bisfi P.S. Case No. 78 of 2007. The petitioner is further charged that if the petitioner would have taken appropriate action, the occurrence of Bisfi P.S. Case No. 48 of 2008 may not have happened. The petitioner made inordinate delay in supervising Madhubani P.S. Case No. 230 of 2007 and Bisfi P.S. Case No. 177 of 2007.

4. The petitioner filed his show cause before the I.G., the enquiry officer. The enquiry officer submitted the enquiry report vide Letter No. 4203 dated 19.10.2011 (Annexure-10) and did not find the petitioner guilty of any charge. The Special Secretary Home (Police) Department, Govt. of Bihar, Patna gave second show cause notice differing with the findings of the enquiry officer vide letter as contained in Letter No. 2/M 02-7024/2009 dated 31.05.2012



(Annexure-J to the counter affidavit). The petitioner filed his detailed show cause stating the entire facts that he did not commit any laxity either in supervising the case or in arresting the accused but, the Special Secretary Home (Police) Department, Govt. of Bihar, Patna vide order as contained in Memo No. 1840 dated 06.03.2013 (Annexure-12) ordered for deduction of 10% pension of the petitioner.

5. Learned counsel for the petitioner submits that the enquiry officer submitted enquiry report stating that no charge is proved but, made recommendation to take action against the investigating officer or the SHO of the concerned police station for not arresting the accused. The petitioner on being asked for second show cause submitted detailed explanation but, the disciplinary authority did not discuss any facts and come to the conclusion that the petitioner was lax and negligent and directed for deduction of 10% pension. It is further submitted that the proceeding, itself, is bad in view of provisions as contained in Section 43(b) of the Bihar Pension Rules, as the petitioner did not cause any pecuniary loss nor committed any gross misconduct during his service tenure. It is further submitted that moreover no charge has been proved against the petitioner. The disciplinary authority has not passed the order in view of Bihar Government Servants (Classification, Control & Appeal)



Rules, 2005.

6. Learned AC to GA 2 has submitted that the order does not require any interference. The enquiry officer has, himself, recommended for taking action for not arresting the accused. The disciplinary authority asked show cause and after consideration of show cause the order of deduction of 10% of pension is passed.

7. From perusal of the enquiry report dated 18.10.2011 (Annexure-10), it is apparent that the enquiry officer found that no charge of negligence or favouritism was proved directly or indirectly against the delinquent. The enquiry officer found that there is no material on record to show that the Dy.S.P., Benipatti committed any negligence or showed any favouritism to any person while he was posted as Dy.S.P., Benipatti. The enquiry officer at the fag end of his report recommended for taking action against the investigating officer of Bisfi P.S. Case No. 78 of 2007 and Madhubani (Town) P.S. Case No. 230 of 2007 and the respective SHO but did not whisper any word against the delinquent, the petitioner. The disciplinary authority, however, issued second show cause vide Letter No. 4500 dated 31.05.2012 (Annexure-J to the counter affidavit) calling upon the petitioner to show cause. The disciplinary authority has stated that on the basis of the recommendation to take action against the investigating officer and the SHO for committing negligence, the



petitioner cannot be exonerated from the charge of negligence. The petitioner gave his detailed show cause on 12.06.2012 (Annexure-11) but, the disciplinary authority without looking into the show cause directed for deduction of 10% of the pension of the petitioner. Whether the order of withholding 10% pension suffering from illegality or based on evidence?

8. Section 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 says as follows:

18. Action on the inquiry report. – (1) *The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.*

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17(23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner



specified in sub rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.

9. From perusal of the aforesaid provisions it appears that the disciplinary authority, if he differs with the findings of the enquiry officer, he shall record his finding of difference on evidence collected during the course of enquiry and thereafter the procedure shall be called upon to show cause. The disciplinary officer shall consider the show cause filed by the petitioner and legally bound to discuss the materials on record for coming to a different conclusion of guilt of the delinquent, but from the order as contained in Annexure-12, it appears



that there was no material on record to show that the petitioner being Dy. S.P. committed any negligence or showed any favouritism to any of the accused. The enquiry officer did not find the petitioner guilty of any charge and practically there is no evidence against the petitioner. Therefore, the order of the disciplinary authority without giving any finding of guilt of the petitioner on non-existence evidence is bad. Therefore, I am of the considered view that the punishment of withholding 10% of pension which is major punishment suffers from illegality and not sustainable.

10. Accordingly, the order as contained in Memo No. 2/M2 70-24/09 1840 (Annexure-12) dated 06.03.2013 is set aside and the writ petition is allowed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2017
Transmission Date	NA

