

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10349 of 2016

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Suresh Rai son of Wazir Rai Resident of Village- Rajapur, P.S.- Nayagaun,
District- Saran at Chapra.

.... Petitioner

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.

.... Respondents

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Appearance :

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

For the Respondent/s : Mr. Sajid Salim Khan, SC-25
Ms. Prakritita Sharma, AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-09-2017

Heard Mr. Pramod Kumar, learned counsel for the
petitioner and Mr. Sajid Salim Khan, learned SC-25, for the State.

In the nature of the order which this Court proposes to pass
it would not be required to delve deep into the merit of the case.
Suffice it to say that the petitioner is aggrieved by the punishment
order bearing Memo No. 91 dated 17.5.2015, whereby the disciplinary
authority cum Commandant, Bihar Military Police-16, Phulwari
Sharif, Patna has imposed punishment of stoppage of one increment
for six months without cumulative effect, which is equivalent to one
black mark . The salary of the petitioner for the period of absence of
19 days also has been forfeited.



Learned counsel for the petitioner has invited attention of this Court to the enquiry report at Annexure 7 to submit that although the Enquiry Officer has accepted that the petitioner was being medically treated for his ailment, but since according to the Enquiry Officer the petitioner did not give information within time, that the charges have been partially upheld.

It is next in reference to the punishment order at Annexure 8 submitted that the disciplinary authority even while disagreeing with the opinion of the Enquiry Officer to uphold the charges in its totality, has failed to comply the provisions underlying Rule 18(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), which inter alia mandates that where the disciplinary authority chooses to disagree with the findings of the Enquiry Officer he should serve a copy of disagreement note recording his reasons for such disagreement and serve upon the delinquent to file his representation thereon but which obligation has not been discharged.

Though Mr. Khan, learned State Counsel, proceeds to contest the arguments on merits but the violation is confirmed from the records itself. The Commandant as the disciplinary authority, while recording his disagreement with the opinion of the Enquiry Officer, has failed to take notice of the stipulations present at Rules



18(2) and 18(3) of 'the Rules' which obliges the disciplinary authority to record his reasons for such disagreement and serve upon the delinquent to enable him to file representation in response thereto and it is only after consideration of the representation of the delinquent that a final order has to be passed. This mandatory discharge has been overlooked by the disciplinary authority rendering the order illegal.

In result, the punishment order bearing Memo No. 91 dated 17.5.2015 passed by the disciplinary authority cum Commandant, Bihar Military Police-16, Phulwari Sharif, Patna, impugned at Annexure 8, together with the order of the appellate authority at Annexure 10 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

This order, however, would not preclude the disciplinary authority to proceed afresh in the matter from the stage of submission of enquiry report, but the exercise has to be in accordance with law.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

