

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1539 of 2016

=====

Rambabu Singh Son of Mathur Singh Resident of Village-Dhanichapra, P.s Manjhi,
District Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Director of General of Police, Govt. of Bihar, Old Secretariat, Patna.
3. D.I.G. of Police, Military Police, Central Zone, Patna.
4. Commandant, B.M.P. -16, Phulwari Sahrif Patna.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Adv.

For the Respondent/s : Mr. Parijat Saurav, AC to AAG-10

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-04-2017

Heard Mr. Ram Hriday Prasad, learned counsel appearing on behalf of the petitioner and Mr. Parijat Saurav, AC to AAG-10, for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner has questioned the order dated 16.7.2015 passed by the Commandant, B.M.P.16, Phulwarisharif, Patna, whereby he has been imposed a punishment of stoppage of increment for a period of one year, which is equivalent to a black mark. The order of the Commandant impugned at Annexure 3 has been confirmed by the appellate authority i.e. Deputy Inspector General of Military Police, Central Zone, Patna vide order passed on 7.9.2015, impugned at Annexure 5.



Amongst other grounds which has been raised by the learned counsel for the petitioner, he submits that even though the Enquiry Officer has exonerated the petitioner of all charges vide enquiry report present at Annexure 2 but the Commandant without issuing a disagreement note as mandated under Rule 18 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') has proceeded to impose punishment simply on a satisfaction shown thereon. He thus submits that the order of the Commandant having been passed without discharge of the obligation cast under Rule 18(2) of 'the Rules' cannot be upheld and for the same reasons even the appellate order has to go.

The argument of Mr. Ram Hriday Prasad on the violation of 'the Disciplinary Rules' is supported from the facts and although learned counsel for the State endeavours to support the impugned order on merits but, in my opinion, the order put to challenge having been passed apparently in violation of the statutory obligation cannot be upheld.

To place the record straight, it is to be noted that Rule 824A of the Bihar Police Manual, inter alia, adopts the procedure provided under Civil Services (Classification, Control and Appeal) Rules, 1930 as well as Bihar Sub-ordinate Services (Discipline and Appeal) Rules, 1935 which Rules has since been replaced by 'the Disciplinary Rules' of 2005. In other words the proceedings under the Bihar Police



Manual is governed by the statutory provision underlying 'the Disciplinary Rules', 2005. Rule 18(2) of 'the Disciplinary Rules' manifestly casts obligation on the disciplinary authority if he chooses to disagree with the enquiry report to record his reasons for such disagreement and under Sub Rule (3) he is under obligation to forward his opinion to the delinquent for his response thereto. It is undisputed that this mandatory obligation has not been discharged by the Commandant who has simply proceeded to record punishment without discharging his obligation.

In view of uncontested position reflecting from the records, the order of punishment dated 16.7.2015 passed by the Commandant, B.M.P.16, Phulwarisharif, impugned at Annexure 3 as well as the appellate order dated 7.9.2015 passed by the Director Inspector General of Military Police, Central Zone, Patna, impugned at Annexure 5, cannot be upheld and are accordingly quashed and set aside. The matter is remitted to the disciplinary authority for proceeding afresh, if so advised, but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.05.2017
Transmission Date	NA

