

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9307 of 2012

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Deep Narayan Paswan, S/o Late Yamuna Paswan, R/o Village- Ekchari Purabtola,
P.S.- Kahalgaon, (Rasalpur), District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The D.G.P., Bihar, Patna
3. The I.G., Bhagalpur Range, Bhagalpur
4. The D.I.G. Bhagalpur, Bhagalpur
5. The S.P., Bhagalpur
6. The S.P., Munger
7. The Sergeant Major, Bhagalpur
8. The Officer Incharge, Babarbag Police Station, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sadanand Paswan, Advocate

For the Respondent/s : Mr. Lalit Kishore, A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-08-2017

Challenging the order of punishment imposed on 06.07.2009 vide Memo No. 2072 (Annexure-7) imposing the punishment of reversal to the initial post in the cadre in question and withholding of salary for the period the petitioner remained absent, the writ petition in question was filed and while hearing the matter on 09.07.2012 the order of punishment was stayed by this Court on account of the fact that *prima facie* a re-inquiry into the same allegation after the petitioner was exonerated in the first inquiry was not permissible.



Facts in brief go to show that while working as a Constable in the department in question petitioner was found to be unauthorizedly absent for a period of 315 days and for the same, a charge-sheet was issued to him. A departmental inquiry was conducted into the charge-sheet and the Inquiry Officer after conducting inquiry submitted his report on 16.09.2007 exonerating the petitioner of all the charges holding him not guilty and finding that he was suffering from Tuberculosis, he was not unauthorizedly absent, he was undergoing treatment in the hospital and the departmental authorities were apprised of these facts and he has submitted an application for grant of Medical Leave. However, it seems that without passing any order disagreeing with the findings of the Inquiry Officer, a *de novo* inquiry was conducted and in the *de novo* inquiry a separate finding was recorded on 29.01.2009 and based on the same, the impugned order (Annexure-7) has been passed.

Learned counsel for the petitioner pointed out that after the first inquiry was conducted and the petitioner was exonerated on 16.09.2007, he did not receive any show-cause notice, no order was passed and in an illegal manner a *de novo* inquiry has been ordered, which is not permissible under the Bihar Police Service Rules.

On notice being issued, respondents have filed a counter



affidavit and in the counter affidavit in Paragraph 9 they only say that the finding of the first inquiry authority was not proper. The Superintendent of Police, Bhagalpur examined the same, recorded reason for re-initiating the inquiry and ordered a fresh inquiry.

Except for making such bald statement in the counter affidavit, neither the order passed by the Superintendent of Police, Bhagalpur, as indicated in Paragraph 9, is produced nor particulars of the order indicated with memo number and date nor the reasons based on which the matter was remitted for fresh inquiry have been brought on record. The petitioner in the writ petition makes a specific averment that after the first inquiry was conducted he was not heard, no notice was issued to him, no order was served on him and the second inquiry was conducted in total contravention to the provisions of Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. From Paragraph 9 onwards the petitioner has made specific allegations in this regard and the respondents have not indicated to this Court as to why the first inquiry report was not accepted, what was the error and lacuna in the first inquiry, what were the reasons that weighed with the Superintendent of Police in directing for a second inquiry and whether before directing for a second inquiry notice was issued to the petitioner and he was heard. All these things having not been complied with, which are the



requirements of law, they are sufficient enough to interfere into the matter, quash the order and allow the petition.

Accordingly, this Court has no hesitation in doing so. The writ petition is allowed, the order impugned dated 06.07.2009 (Annexure-7) quashed and the petitioner is directed to be granted all consequential benefits accruing out of quashing of the order impugned now after his retirement.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.08.2017
Transmission Date	

