

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8881 of 2014

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Ram Padarth Singh Son of Late Mangal Singh Tola - Bokane Patti, Post - Bokane
Kala, P.S. Patahi, Block - Patahi, District - East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, East Champaran District - East Champaran
4. The District Panchayat Raj Officer, East Champaran, Motihari
5. The Sub Divisional officer - Cum - Conducting Officer, Pakri Dayal, District - East Champaran
6. The Block Development Officer, Paharpur, District - East Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Prakash Sharma, Adv.

For the Respondent/s : Mr. Sanjay Kumar, AC to SC-15

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 25-08-2017

Heard both sides.

2. The petitioner in this writ petition prayed to quash the order dated 04.08.2011 of the District Magistrate, East Champaran, as contained in Memo No. 1193 (Annexure-8) as well as the order dated 11.03.2013 (Annexure-10) passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur by which the appeal of the petitioner has been dismissed.

3. Learned counsel for the petitioner while assailing the order of the Collector and the Divisional Commissioner, Tirhut Division, Muzaffarpur submits that the petitioner was departmentally



proceeded for absence of one day i.e. on 17.06.2009. The enquiry officer did not consider the medical prescription of the petitioner and recommended for stoppage of one increment of the petitioner with non-cumulative effect. The District Magistrate, East Champaran after having received the enquiry report ordered to stop one increment of the petitioner with non-cumulative effect, but also ordered for non-payment of any other allowances save and except subsistence allowance for the suspension period. The disciplinary authority cannot withhold payment of salary and other allowances of the petitioner during the suspension period without giving any notice to the petitioner and the order is bad in view of Rule 11 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “the C.C.A. Rules, 2005”) as well as Rule 97 of Bihar Service Code.

4. Learned counsel for the State submitted that simple punishment of stoppage of one increment with non-cumulative effect is passed and there is no procedural illegality, but at the same time admitted that if the disciplinary authority withheld the payment of salary and other allowance of a government servant during the suspension period, sub-rule (3) and (5) of Rule 11 of the C.C.A. Rules, 2005 mandates the disciplinary authority to give notice to the government servant.



5. For appreciation of the submissions of the parties, it would appear expedient to reproduce Rule 11 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 which reads as follows:-

Rule 11. Treatment of service on reinstatement and admissibility of pay and allowances after suspension –

(1.) When a government servant under suspension is reinstated or would have been so reinstated but for his superannuation while under suspension, the disciplinary authority shall consider and make specific order regarding the following-

(a.) the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and

(b.) whether or not the said period shall be treated as a period spent on duty.

(2.) Notwithstanding anything contained in rule-10 of these Rules, where a government servant under suspension has died before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid and the adjustment of government dues or loans.

(3.) Where the disciplinary authority is of the opinion that the suspension was wholly unjustified, the government servant shall, subject to the provisions of sub-rule (8) of this rule, be paid such full pay and allowances to which he would have been entitled, had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid;

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the government servant had been delayed due to reasons directly for which the government servant is liable, it may, give the government servant an opportunity to make his or her representation and consider the representation, if any, submitted by him or her. After that it may direct, for reasons to be recorded in writing, that the government servant shall be paid for the period of such delay only



such proportion of such pay and allowances as may be determined by it.

(4.) In cases falling under sub-rule (3) of this rule, the period of suspension shall be treated as a period spent on duty for all purposes.

(5.) In cases other than those falling under sub-rules (2) and (3) of this rule, the government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the disciplinary authority may determine. Such determination by the disciplinary authority shall be done after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the government servant.

(6.) Where suspension is revoked pending finalisation of the disciplinary proceeding or proceedings in a court, any order passed under sub-rule (1) of this rule before the conclusion of the proceedings against the government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the disciplinary authority and an order shall be made by him in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.

(7.) In a case falling under sub-rule (5) of this rule the period of suspension shall not be treated as a period spent on duty, unless the disciplinary authority specifically directs that it shall be the period spent for any specified purposes.

(8.) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) of this rule shall be subject to all other conditions under which such allowances are admissible.

(9.) The proportion of the full pay and allowances determined under the proviso sub-rule (3) or under sub-rule (5) of this rule shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowance.

6. Having considered the facts and the submission of the parties, I find substance in the argument of the learned counsel for the petitioner. Rule 11 of the C.C.A. Rules, 2005 prescribes the procedure of a government servant after revocation of suspension and treatment



of service on reinstatement and admissibility of payment and allowance of a government servant after revocation of suspension. If the disciplinary authority found or is of the opinion that the suspension was wholly unjustified, the government servant is entitled to get full pay and allowance to which he would have been entitled had he not been suspended and the disciplinary authority should pass such order adjusting the amount of subsistence allowance as already paid to the government servant.

Sub-rule (5) mandates that if the disciplinary authority finds that suspension is wholly unjustified the disciplinary authority may determine the proportion of salary and other allowances to the government servant during the period of suspension. Such determination by the disciplinary authority shall be done after giving notice to the government servant of the quantum proposed and after considering the representation if any submitted by the government servant within sixty days from the date of notice duly served on the government servant. The order of the disciplinary authority as well as the appellate authority appears to have been passed stopping the payment of salary and other allowance of the petitioner during his suspension period. Admittedly, the petitioner was under suspension on account of his absence for one day and the enquiry officer found the explanation of the petitioner unsatisfactory and recommended for



stoppage of one increment with non-cumulative effect, but the disciplinary authority also withheld the salary and other allowance of the petitioner during his suspension period. The disciplinary authority cannot withhold the payment of salary and other allowance of the petitioner without giving him notice as mandated under Sub-rule (2), (3) and (5) of the C.C.A. Rules, 2005. Therefore, I find that the order of the disciplinary authority dated 04.08.2011, as contained Memo No. 1193 (annexure-8) and order of the appellate authority dated 11.03.2013 (annexure-10) are bad and not sustainable. Accordingly, both the orders are set aside. Thus, the writ petition is allowed. The matter is remitted to the disciplinary authority to pass order afresh with regard to payment of salary and other allowance of the petitioner during the suspension period.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
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