

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11827 of 2017

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Dinesh Prasad Singh Son of Late Anurag Singh, resident of Village- Bariarpur
Bujurg, P.S.- Raja Pakar, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Home (Police) Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Patna Zone, Patna.
5. The Deputy Inspector General of Police, Central Range, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Commandant, Bihar Military Police- 02, Dehri, Rohtas.
8. The District Provident Fund Officer, Patna.
9. The District Provident Fund Officer, Rohtas.
10. The Treasury Officer, Patna.
11. The Treasury Officer, Rohtas.
12. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Adv. Mr. Baua Jha, Adv.
For the Respondent/s for the Accountant General	:	Mr.Md.Nadim Seraj – GP-5 Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

3 19-04-2019 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

Petitioner has filed I.A. No. 8587 of 2017 for payment
of 90% pension and gratuity in terms of Rule 43(c) of the Bihar
Pension Rules. Another I.A. being no. 1294 of 2018 has been
filed whereby the prayer of the petitioner is for quashing of the
Memo No. 3785 dated 23.12.2017 issued by the Commandant



B.M.P.-2 as contained in Annexure-6 whereby it has been decided that after the conclusion of the departmental proceedings, the provisional pension, gratuity and leave encashment would be paid.

Considering the submission of the petitioner as well as the relief claimed, both I.A. No. 8587 of 2017 and I.A. No. 1294 of 2018 is allowed.

Petitioner retired from the post of Sub Inspector of Police w.e.f. 31.08.2016 from the office of the respondent no. 7 the Commandant, Bihar Military Police-2, Dehri, Rohtas. On 10.09.2014, the petitioner while working as Sub Inspector of Police in the District Force, Patna was arrested in a trap case leading to institution of Gandhi Maidan P.S. Case No. 328 of 2014. Petitioner was suspended on 11.10.2014 and a departmental proceeding was also initiated. Without converting the departmental proceeding under 43(b) as the petitioner had already retired, a punishment order was passed by the respondent no. 5, the Deputy Inspector General of Police, Central Range, Patna dated 12.01.2017 as contained in Annexure-1 directing 50% deduction of pension for 10 years. The petitioner preferred an appeal before the Appellate Authority which was found by the appellate authority that a



departmental proceeding could not have continued against a retired employee and without its conversion under 43 (b) no punishment order could be passed. Hence, the punishment order dated 12.01.2017 was set aside and the departmental proceeding was converted under 43 (b) by letter dated 22.09.2017 as contained in Annexure-A to the counter affidavit filed on behalf of the respondent no. 7. Petitioner represented for payment of 90% of provisional pension during pendency of the departmental proceeding/judicial proceeding which was rejected by order dated 23.12.2017 passed by the Commandant, B.M.P.-2, Dehri, Rohtas as contained in Annexure-6 with an observation that till the decision of the departmental proceeding, the petitioner is not entitled to provisional pension, gratuity and leave encashment. Petitioner has challenged the said order by way of I.A. No. 1294 of 2018. Petitioner submits that as per 43(c) of the Pension Rules, a retired Government employee is entitled to 90% of the provision pension and gratuity. The relevant extract of 43 (c) of the Pension Rules is extracted below:-

“43.(c)- Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the



service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).

This will come into force with immediate effect.”

Considering the submissions of the petitioner and the State, this writ application is disposed of with a direction to the respondent no. 7, the Commandant, Bihar Military Police-2, Dehri, Rohtas to look into the claim of the petitioner regarding provisional pension of 90% in view of the provisions of 43(c) of the Bihar Pension Rules and make payment of the pension and gratuity to the petitioner if not otherwise convicted in judicial proceeding or any punishment order has been passed in the departmental proceeding, within a period of two months from the date of receipt/production of the copy of this order.

(Nilu Agrawal, J)

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