

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23745 of 2012

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Madan Kumar S/O Late Janak Singh R/O Vill-Ibrahimpur, P.O.-Nagwan, P.S.-
Naubatpur, Distt-Patna, Bihar, At Present Posted As Warder , Special Central
Jail, Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary Department of Home (Prison), Govt. of Bihar, Patna
2. The Inspector General , Prison, Bihar, Patna
3. The Director,Administration, Prison Inspection House, HomePrison Department , Govt. Of Bihar, Pa
4. The Jail Superintendent -Cum-Conducting Officer, Special Central Jail, Bhagalpur, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kr. Choudhary, Sr. Advocate Mr. Arvind Kumar, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 25-08-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“i) For issuance of a writ of certiorari quashing the order contained in Memo no. 956 dtd. 12.03.2012 (Annex. - 19) passed by the Principal Secretary, Home (Prison) Department, Govt. of Bihar in Service Appeal filed by the petitioner, challenging the order contained in memo no. 1437 dtd. 30.03.2011 whereby punishment of stoppage of four increments of the petitioner with cumulative effect and denial of



dues salary for the period of suspension except the subsistence allowance has been awarded.

ii) For quashing the order contained in memo no. 1437 dtd. 30.03.2011 (Annex. 17) whereby the punishment of stoppage of four increments with cumulative effect and denial of dues salary for the period of suspension except the subsistence allowance has been awarded to the petitioner.

iii) For issuance of a writ of mandamus directing the respondents to pay the petitioner his due salary for the period of suspension except subsistence allowance as well as all the consequential benefits to the petitioner.

iv) And/or pass such other order/orders as Your Lordship may deem fit and proper.”

3. The petitioner while working as a warder in the prison department, there was a incident of committing suicide by one of the prisoner while hanging himself till death namely *Rajesh Kumar Singh* on 05.06.2006. On the alleged dereliction and negligence of the petitioner's duty, he was placed under suspension on 05.06.2008. He was subjected to disciplinary proceedings in framing article of charges and it was concluded in imposition of penalty of withholding of four increments with cumulative effect and treating the suspension period as suspension only to the extent of paying subsistence allowance. Feeling aggrieved and dissatisfied with the order of penalty, the



petitioner preferred appeal before the appellate authority and it was rejected while affirming the order of penalty on 12.03.2012. Hence the present petition insofar as questioning the validity of the penalty order and its confirmation by the appellate authority.

4. Learned counsel for the petitioner submitted that charge memo is not supported by list of witnesses and further witnesses have not been examined in the disciplinary proceedings. It is submitted that based on certain records the inquiring authority proceeded to hold charge levelled against the petitioner were proved. The disciplinary authority has not taken note of that there are lacunas in framing of article of charges like furnishing list of witnesses in support of the alleged charge which is one of the requirement under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Similarly, the appellate authority was required to examine whether disciplinary authority has followed the relevant rules in a disciplinary proceedings or not *vide* Rule 27 “Consideration of Appeal”.

5. *Per contra*, learned counsel for the respondent resisted the aforesaid contention and submitted that sufficient material is available to show that there were a negligence and dereliction of duty on the part of the petitioner which has resulted in committing suicide by *Rajesh Kumar Singh* on 05.06.2006.



6. Heard learned counsels for the respective parties.

7. Perusal of the records, it is evident that charge memo is not accompanied by of list of witnesses. Petitioner was also not examined and cross-examined by the presenting officer before the inquiring authority. The inquiring authority proceeded to hold charge levelled against the petitioner were proved with reference to documentary materials. Author of the documents have not been examined and cross-examined. The disciplinary and appellate authority have not apprised the aforesaid defects while imposing the penalty and confirming the order of penalty. It was bounden duty on the part of the disciplinary authority and appellate authority to examine as to whether article of charges were framed in accordance with the relevant provision of law and further whether the inquiring officer has adhered to his functions as an inquiring authority. The appellate authority while considering the petitioner's appeal, it was his bounden duty to examine whether relevant rules have been adhered to by the disciplinary authority while holding disciplinary proceedings or not? These are the legal issues raised by the learned counsel for the petitioner. On these points the impugned orders dated 12.03.2012 (Annexure - 19) and 30.03.2011 (Annexure - 17) are liable to be set aside. Accordingly, they are set aside.



8. Writ petition stands allowed.

9. The concerned respondent is hereby directed to calculate monetary benefits and release the same in favour of the petitioner, if he is otherwise eligible, within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2022
Transmission Date	

