

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7185 of 2017

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Meghnath Ram Son of Late Bhagirath Ram Resident of Village-Shankarbigha, P.S. - Wazirganj, District-Gaya, at present resident of Mohalla-Gola Road, P.S. - Rupaspur, District-Patna

... .. Petitioner/s

Versus

1. The Union Of India, through the Secretary, Ministry of Home Affairs, Government of India, New Delhi
2. The Union Public Service Commission, through the Secretary, Dholpur House, Sahjahan Road, New Delhi -110069
3. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
4. The Principal Secretary, Home (Police) Department, Government of Bihar, Old Secretary, Patna
5. The Special Secretary, Home (Police) Department, Government of Bihar, Old Secretary, Patna
6. The Joint Secretary, Home (Police) Department, Government of Bihar, Old Secretary, Patna
7. The Director General of Police cum Inspector General of Police, Government of Bihar, Old Secretariat, Patna
8. The Additional Director General of Police (Law and Order), Government of Bihar, Old Secretariat, Patna
9. The Zonal Inspector General of Police, Darbhanga Zone, Darbhanga
10. Departmental Enquiry Commissioner cum Conducting Officer, Old Secretariat, Patna
11. Inspector General of Police (Headquarter), Old Secretariat, Patna

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 19290 of 2017

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Meghnath Ram, Son of late Bhagirath Ram, Resident of Village-Shankarbigha, P.S.-Wazirganj, District-Gaya. At Present Resident of Mohalla-Gola Road, P.S.-Rupaspur. District-Patna.

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8. The Additional Director General of Police (Law and Order), Government of Bihar, Old Secretariat, Patna
9. The Zonal Inspector General of Police, Darbhanga Zone, Darbhanga.
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11. Inspector General of Police (Headquarter), Old Secretariat, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7185 of 2017)

For the Petitioner	:	Mr.Vinay Ranjan, Advocate
For the State	:	Mr.Ajay Kumar, AC to GP-4
For UOI	:	Mr. Sujit Kumr Sinha, CGSC
For UPSC	:	Mr. K.K. Jha, Sr. Advocate
		Mr. Amish Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 19290 of 2017)

For the Petitioner/s	:	Mr.Vinay Ranjan, Advocate
For the Respondent/s	:	Mr.Md. N. H. Khan-SC-1

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-02-2023

CWJC No. 7185 of 2017

In the instant petition, petitioner has assailed the
Central Administrative Tribunal's order dated 20.01.2016 passed
in OA No. 963 of 2012.

Brief facts of the case as culled out from the order



of the CAT in Para 2 reads as under:-

“[I] The applicant, namely Shri Meghnath Ram, is a member of the IPS (Bihar: 1990) and superannuated from the post of Superintendent of Police “B”, Special Branch, Government of Bihar on 31.10.2009.

[ii] Disciplinary proceedings were initiated against the applicant under Rule 8 of All India Services (Disciplinary and Appeal) Rules 1969 and a charge sheet was issued vide memo dated 08.07.2008. (Annexure-1). The charges related to various acts of omission and commission of the applicant in regard to his official duties/responsibilities as Superintendent of Police, Samastipur. The said charges also involved non-compliance of orders, lapses in dealing with police cases and failure to discharge prescribed official obligations.

[iii] In response thereto, the applicant filed his reply dated 25.07.2008 denying the charges. To the extent his reply was not found satisfactory, an inquiry was conducted pursuant to orders issued on 23.01.2009. (Annexure-2).

[iv] The Inquiry Authority, in its report dated 09.10.2009, held that out of nine charges against the applicant, eight charges stood proved while one charge was not proved.

[v] Since the applicant superannuated from service



on 31.10.2009, the disciplinary proceedings were deemed to be continued under Rule 6 of the AIS (Death-cum-Retirement Benefit) Rules, 1958.

[vi] Vide memo dated 25.08.2010 (Annexure-3), a copy of report of the Inquiry Officer was provided to the applicant to enable him to submit his response/comments on the same. In response thereto, the applicant submitted his reply vide letter dated 25.10.2010.

[vii] However, on consideration of the report of the Inquiry Officer alongwith representation submitted by the applicant, the Disciplinary Authority (Government of Bihar) recommended imposition of a suitable penalty to cut in pension of the applicant and forwarded the proposal to the Competent Authority (Ministry of Home Affairs) for approval.

[viii] After due examination of the entire matter, the Competent Authority also came to the conclusion that a suitable penalty of cut in pension be imposed upon the applicant. Accordingly, the competent authority referred the proposal to the UPSC for its statutory advice on the quantum of penalty.

[xi] On its part, the UPSC has, after examination, concluded vide letter dated 23.08.2011 that the charges established against the applicant constitutes “a grave



misconduct on his part and that the ends of justice would be met if a penalty of withholding of 10% of monthly pension for a period of three years is imposed on Shri Meghnath Ram, IPS (retired)).”

(x) Accepting the recommendation of the UPSC, the Competent Authority (Ministry of Home Affairs) has, vide orders dated 06.09.2011 (Annexure-9), imposed the said penalty which has now been challenged by the applicant through this O.A.”

Learned counsel for the petitioner submitted that the Tribunal has not appreciated the factual aspect of the matter that explanation to the charge-memo, explanation to the second show cause notice, has not been taken note of while proceeding with the inquiry and imposition of penalty. It is further submitted that two witnesses have been cited in support of the alleged charges in the charge-memo, they have not been summoned by the inquiring authority for the purpose of examination and cross-examination whereby petitioner has been denied opportunity of adducing his evidence and cross-examination of the relevant witnesses. It is submitted that inquiring authority proceeded to hold the charges which were proved only with reference to documents. In other words, author



of the documents has not been examined. On this point, learned counsel for the petitioner cited Apex Court decision, namely, ***Roop Singh Negi Vs. Punjab National Bank and others***, reported in ***(2009) 2 SCC 570***. It is further submitted that UPSC advice in terms of Rule 9(4) of All India Services (Disciplinary and Appeal) Rules, 1969 (for short 'the Rules, 1969'). It is submitted that along with second show cause notice, the concerned authorities should have provided Inquiring officer's report and copy of the UPSC advice while seeking explanation of the petitioner. On the other hand, copy of the UPSC advice has been made available to the petitioner along with the penalty order. Therefore, whatever the material obtained from the UPSC advice for the purpose of imposing penalty was behind the back of the petitioner. On this point also, the impugned order of penalty and consequential orders are liable to be set aside.

Per contra, learned counsel for the respondents resisted the aforesaid contentions and contended that the Rules, 1969 read with Rule, (DCRB) Rules, 1958 has been followed in the light of the fact that the petitioner was a retired IPS Officer. There is no provision under Rules, 1969 to provide copy of the UPSC advice along with the second show cause notice. It is also submitted that non-examination of the cited witnesses may not



be material for the reason that certain reports/documents have been taken note of by the inquiring authority to prove the charges levelled against the petitioner. It is also submitted that explanation of the petitioner to the charge-memo and/or inquiring officer's report has been taken note of by the disciplinary authority while proceeding with the inquiry and imposition of penalty. The CAT has taken note of report and other materials, in deciding the OA No. 963 of 2012, hence, no interference is called for.

Heard learned counsels for the respective parties.

The petitioner was subjected to the disciplinary proceeding while framing of charges on 08.07.2008 which was concluded in imposition of penalty of 10% cut in pension for a period of three years under Rule 6(4) of Rules, 1958. The petitioner feeling aggrieved by the imposition of penalty filed OA No. 963 of 2012 before the CAT and in which he has suffered order on 20.01.2016.

Learned counsel for the petitioner submitted that the explanation to the charge-memo has not been considered by the disciplinary authority, explanation on the inquiring officer's report was not considered by the disciplinary authority, cited witnesses have not been examined in the inquiry, copy of the



UPSC advise was not furnished to the petitioner before imposition of penalty and seeking petitioner's explanation on the UPSC advise. The CAT has not appraised the aforementioned contentions. Non-examination of the witnesses is one of the crucial and legal issue involved in the present *lis*. In support of non-examination of the witnesses, the Apex Court decision in the case of ***Roop Singh Negi*** (supra) is aptly applicable to the case in hand. Further UPSC advice to impose penalty has not been made available to the petitioner before imposition of penalty, to that extent, there is violation of principles of natural justice. In other words, behind the back of the petitioner, UPSC Advice has been obtained by the disciplinary authority and acted upon the said UPSC Advice while imposing penalty.

Contentions of the respondents that examination of witnesses is not material in the present case since the inquiry officer has relied upon report of the cited witnesses and it is sufficient to prove the charges. Such a contention is not appreciable in the light of Apex Court decision in the case of ***Roop Singh Negi*** (supra) and Insofar as non-furnishing of UPSC advice is concerned, it is submitted that there is no provision. Even if there is no provision in not providing UPSC copy and the same has been taken note of by the disciplinary



authority while imposing penalty, the petitioner has not been provided opportunity of his say on the UPSC advice. On this point, it is necessary to take note of Apex Court decision in the case of ***Managing Director, ECIL vs. B. Karunakar*** reported in ***(1993)4 SCC 727*** in which one of the principles is that even if the regulation or rules do not provide for furnishing copy of the inquiring officer's report, still the concerned authority is bound to furnish the inquiring officer's report, the same yardstick is attracted in the present case insofar as non-furnishing of UPSC advice to the petitioner before imposition of penalty. Therefore, CAT has committed error in not appreciating the legal issues hence, the petitioner has made out a *prima-facie* case so as to interfere with the impugned penalty order dated 20.01.2016 and it is set aside, Original Application No. 963 of 2012 filed by the petitioner stands allowed.

The concerned respondent is hereby directed to calculate difference of pension from the date of 10% cut in pension and pay arrears of pension which was withheld for a period of three years and the same shall be calculated and disbursed in favour of the petitioner within a period of three months from the date of receipt of this order.

Writ application stands allowed.



C.W.J.C. No. 19290 of 2017

Registry is hereby directed to de-link this case.

Relist this matter on 23.02.2023.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/-
Balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2023
Transmission Date	NA

