IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15486 of 2023

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Kumar Devendra Singh, S/o Late Fateh Bahadur Singh, R/o Village-Kodari, singarpur, P.S.-Khanpur, District-Ghazipur, Uttar Pradesh.

... ... Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary-cum-Principal Secretary, Department of Finance, Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Department of Finance, Bihar, Patna.
3. The Additional Chief Secretary, Department of Home (Police), Bihar, Patna.
4. The Deputy Secretary, Department of Home (Police), Bihar, Patna.
5. The Director General and Inspector General of Police, Bihar, Patna.
6. The Additional Director General and Inspector General of Police, Special Branch, Bihar, Patna.
7. The Inspector General of Police, Headquarter, Bihar, Patna.
8. The In-charge Officer, Finance (Personal Claim Redressal Cell) Department, Government of Bihar, Patna.
9. The Superintendent of Police, Araria.
10. The Superintendent of Police (A), Special Branch, Patna.
11. The Treasury Officer, Araira.
12. The Accountant General (A & E), Bihar.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate Mr. Maruth Nath Roy, Advocate
For the Respondent/s	:	Md. Harun Quareshi, AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date: 08-05-2025

Heard the parties.

2. The petitioner, who superannuated from the post of Sub-Divisional Police Officer (S.D.P.O.), Araria on 31.03.2020 after completing more than 35 years, has invoked the jurisdiction of this Court on being aggrieved with Memo No.

959(23) dated 31.08.2022 (Annexure-P-7), whereby it has been informed that by the order no. 82/2022 read with Memo No.214 dated 27.10.2022 (*sic*) the pay of the petitioner has been modified for non-gazetted period resulting into fresh fixation and slashing down the last pay drawn by the petitioner @ Rs.96,900/- and further it has been held that the petitioner is entitled to get only a sum of Rs.11,72,490/- instead of Rs.12,07,580/- towards the earned leave of 300 days and thus a sum of Rs.35,090/- has been directed to be recovered from the petitioner. The petitioner also sought quashing of the Memo No. 960(23) dated 31.08.2022 (Annexure-P-8), by which Memo No.300 (23) dated 12.02.2020 has been modified fixing basic pay of the petitioner @ Rs.96,900/- on 01.07.2019 as also quashing of the Memo No.10376 dated 25.08.2023 (Annexure-P-12), whereby the Additional Chief Secretary, Department of Home (Police), Bihar, Patna, rejected the representation of the petitioner by a reasoned order.

3. The short matrix of the case is that the petitioner was duly appointed as a Sub-Inspector of Police (Direct Recruit) in the year 1984 and subsequently promoted as Inspector of Police in the year 2007. On being found eligible for promotion, the petitioner was promoted in the rank of Deputy

Superintendent of Police on 31.12.2016. In view of the satisfactory service record, the petitioner was extended the benefit of 1st ACP w.e.f. 09.08.1999 and further the benefit of 2nd ACP after completion of 24 years w.e.f. 15.06.2008. The benefit of 3rd ACP was conferred after completion of 30 years of service w.e.f. 15.06.2014. In view of the pay fixation commensurate to the pay revision, the pay of the petitioner was fixed vide Memo No.66 dated 14.01.2019 (Annexure-P1) issued under the signature of the Superintendent of Police, Araria. Finally, the petitioner came to be superannuated on 31.03.2020 with basic pay @ Rs.99,800/- as on 01.07.2019 while working as S.D.P.O., Araria.

4. Based upon the aforesaid fixation of pay, the Superintendent of Police, Araria sanctioned pension and other retiral benefits to the petitioner vide Memo No.287 dated 13.04.2020. Accordingly, Pension Payment Order was issued on 24.06.2020 fixing basic pension @ Rs. 49,900/- against the last basic pay drawn i.e. 99,800/-. Pursuant thereto, all the retiral benefits of the petitioner were paid accordingly.

5. Adverting to the aforesaid facts, Mr. Sanjeev Ranjan, learned Advocate for the petitioner contended that notwithstanding the payment of all the retiral benefits and the

admissible dues as well as the fact that the petitioner had been getting regular pension, in the meanwhile, one Syed Afsar Hashmi moved this Court by filing C.W.J.C. No.3110 of 2021 claiming parity with the petitioner in respect of payment of last basic pay drawn. The writ petition came to be dismissed as withdrawn vide order dated 22.03.2022 with liberty to file representation but surprisingly enough and rather unfortunate that the respondent came out with impugned Memo No.959(23) dated 31.08.2022 stating therein that salary of the petitioner came to be modified by the Superintendent of Police, Special Branch, Bihar, Patna vide order no.82/2022 read with Memo No.214 dated 27.10.2022 holding the petitioner to be entitled for last basic pay drawn @ Rs.96,600/-. Based upon the aforesaid letter(s), a fresh calculation has been made and direction has been issued to recover the amount of Rs.35,090/- from the unutilized earned leave of the petitioner; and this led to issuance of consequential orders, which are also put to challenge before this Court.

6. The primary contention of the learned Advocate for the petitioner, while assailing the impugned orders, is based upon the principle that no person can be condemned unheard. Before issuance of the impugned orders, the petitioner has

neither been served with any show-cause notice or extended opportunity of hearing. Fixation of basic pay as also consequential re-fixation based upon revision of pay-scale and grant of ACP do not suffer from any infirmity. All the more, the pay-scale of the petitioner was fixed in accordance with Memo No.630 dated 21.01.2010 issued by the Finance Department, Bihar, which exclusively deals with revision of pay-scales of the State Government employees w.e.f. 01.01.2006. The Police Headquarter, directed the Special Branch to examine the issue of grant of 2^{nd}, 3^{rd} ACP and MACP and after proper examination and upon verification of the service book of the petitioner at the level of the Finance Department, pension of the petitioner was fixed. During the process of verification, at no point of time, any error was pointed out.

7. On the afore-noted grounds, the petitioner questioned the legality of Memo No.959(23) dated 31.08.2022 by filing C.W.J.C. No. 14794 of 2022, which was disposed off vide order dated 02.05.2023 with liberty to the petitioner to file a detailed representation before the Additional Chief Secretary, Department of Home (Police), Government of Bihar, Patna. In pursuant to the liberty, the petitioner submitted a detailed representation, but to no respite; the same came to be rejected

without considering the fact that other identically situated persons and even junior to the petitioner were getting their pension and other benefits on the basis of last basic pay drawn @ Rs.99,800/-, this led to filing of the present writ petition.

8. It would be pertinent to note here that this Court considering the specific contention of the petitioner that the persons who are either identically situated and juniors to the petitioner have been allowed the benefit by fixing their last basic pay @ Rs.99,800/-; vide its order dated 15.01.2024 directed the respondents to respond to the specific averments on the point of discrimination alleged to have been caused to the petitioner.

9. In compliance with the order of this Court, a counter affidavit has been filed with an averment that there is specific distinction in the cases relied upon by the petitioner as mentioned in the Special Branch Order No.617/2015. It is informed that upon grant of 2nd ACP benefits, pay of the petitioner was fixed in Grade Pay of Rs.5400/- w.e.f. 04.08.2009 whereas the batch mates of the petitioner were getting the benefits of 2nd ACP w.e.f. 15.06.2008 and it is for this reason the pay of the petitioner was less than his batch mates under Special Branch Order No.617/2015. It is also stated that the punishment

of censure was also imposed upon the petitioner by the appellate authority in Departmental Enquiry No.52 of 1997 relating to Jehanabad District and accordingly Special Branch Order No. 617/2015 was modified by Special Branch Order No.1571/2016.

10. The learned Advocate for the State, while supporting the impugned action and the orders of the respondents, has contended that since the date of retirement dates of other police personnels are different from the date of retirement of the writ-petitioner; hence, after making amendment in Departmental Order No.617/2015, fresh order was issued. It is further submitted that the department while considering the representation of Syed Afsar Hashmi came to know that the pension of the writ-petitioner was fixed higher to his entitlement based upon wrong fixation of pay, thus an amendment was made in pension of the present writ-petitioner. Since there was an apparent error in the fixation of pay; hence, it was incumbent upon the department to make necessary correction for the ends of justice. In sum and substance, it is the contention of the learned Advocate for the State that the claim of the petitioner is wholly misconceived and unsustainable and no discrimination has been caused.

11. After giving careful consideration to the

submissions advanced and on perusal of the materials available on record, this Court finds that the contention of the respondent-State Authorities does not substantiate in law as well as on facts.

12. The very grounds of issuance of the impugned orders is said to be are in two folds; firstly, the claim of the petitioner is not based upon parity and the persons who are said to have been accorded pensionary benefits by fixing their last basic pay @ Rs. 99,800/- are having different dates of appointment and they have been extended the benefits of ACP on different dates; secondly the petitioner was inflicted with the punishment of censure.

13. Bare perusal of Departmental Order No.1571/2016, which is said to have been issued after making amendment in previous Departmental Order No.617/2015, it appears that the persons with whom the petitioner sought parity, their pay was invariably fixed @ Rs.34,220/- as on 01.07.2016 at par with the petitioner. The claim of the petitioner that one Sri Raj Kumar Sinha, who is also having same date of birth, date of appointment and date of superannuation, his pay was fixed @ Rs.99,800/- as on 01.07.2019 vide Office Order No.966/2015 contained in Memo No.1030 dated 07.07.2015. Both Sri Raj Kumar Sinha and the petitioner belonged to 1984 Batch and it

has not been clarified as to why and how Sri Raj Kumar Sinha has been extended the benefit of pension based upon his last pay @ Rs.99,800/- whereas in case of the petitioner it came to be reduced to Rs.96,900/-.

14. The reliance of the petitioner with the case of other identically situated person also finds substance that it has not been clarified the position by the respondent(s) that under what circumstances, all the persons appointed along with the petitioner in the year 1984 as well as the persons appointed in the year 1985 as Sub-Inspector of Police (Direct Recruit) and were promoted as Dy. S.P., are being paid their pension and other benefits on the basis of pay of Rs.99,800/-.

15. So far the grounds raised by the respondent(s) regarding inflicting punishment of censure upon the petitioner and thereby he has been deprived of one increment is concerned, it also does not find substance in absence of any rules and regulations, which deprives a person to get such benefit.

16. So far the effect of censure is concerned, even under the Bihar Police Manual, it is dealt under rule 838 as minor punishment, which shall be entered into service book, preceded by following the principles of natural justice. There is

no reference under the Bihar Police Manual that in any circumstances, the censure entails withholding of increment.

17. Even under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity 'the Rules, 2005'), censure comes under the category of minor penalties under Rule 14. [Explanation (2). of Rule 14 of the Rules, 2005 made it clear that the censure shall be entered in the character roll of the year the allegation or omission and commission. The adverse effect of censure on the confirmation and promotion of concerned Government Servant shall be for next three consecutive years after the year of allegation or omission and commission for which he or she is censured.

18. From the Explanation noted with the Rule 14, it appears that the censure in no manner affect the increment of an employee. Withholding of increments of pay without cumulative effect is a separate minor punishment whereas withholding of increments of pay with cumulative effect is a major punishment, as specifically defined under the afore-noted Rule.

19. This Court also finds substance in the submission of the learned Advocate for the petitioner based upon the decision of the Apex Court in the case of **Jagdish Prasad Singh v. State of Bihar and Others [(2024) AIR (SC) 3950]**, wherein

the Court was pleased to hold that *any step of reduction in the pay-scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences.* The Apex Court while examining the order of the learned Single Judge as well as the learned Division Bench of this Court, has held that *the order(s) seem to have fallen in error, inasmuch as no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay-scale of Rs.6500-10500 applicable to the post way back on 10.03.1991 and had also superannuated eight years ago before the recovery notice dated 15.04.2009 was issued*. The Court further held that *the impugned order directing reduction of pay-scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained*.

20. This Court also finds that there is no allegation of fraud or misrepresentation on the part of the petitioner and even if for the sake of argument, it is assumed that there was certain discrepancies, it was not attributed to the petitioner and, as such, no recovery can be made after the superannuation of the

petitioner.

21. The Hon'ble Apex court taking note of the previous judgments on the issue of recovery from the employees who are either superannuated or likely to be superannuated within a year has unequivocally held in the case of **State of Punjab & Ors. v. Rafiq Mashi [(2015) 4 SCC 334]** that *recovery would be iniquitous and arbitrary, if it sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation*.

22. The aforesaid legal proposition has been reiterated in the case of **Thomas Daniel v. State of Kerala and Others [(2022) SCC OnLine SC 536]**, wherein the Hon'ble Supreme Court ruled that *the State cannot recover excess amount paid to the ex-employee after the delay of 10 years*.

23. On all the counts, this Court finds merit in the writ petition and accordingly the impugned orders as contained in

Memo No. 959(23) dated 31.08.2022 as also the Order No. 82/2022 read with Memo No.214 dated 27.10.2022 (*sic*) and further Memo No.960(23) dated 31.08.2022 and Memo No.10376 dated 25.08.2023 to the extent it modified the basic pay and consequential fixation of pension and other benefits of the petitioner are hereby held to be unsustainable and accordingly they are set aside.

24. The respondents are directed to restore the basic pay and pension of the petitioner as was done prior to the issuance of the impugned orders, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order. Recovery, if any, effected during interregnum period shall also be restored.

25. The writ petition stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-05-2025
Transmission Date	