

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7770 of 2021

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Ashok Kumar Son of Kapileshwar Sharma Resident of Village-
Shamshernagar, P.S.- Daudnagar, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretay, Government of Bihar, Patna.
2. The District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. The Enquiry Officer cum CCSMU incharge, Police Thana Siwan.
5. The Officer in charge, Basantpur Police Station.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Abhishek Anand, 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 : 30-11-2021

Heard the learned counsels for the parties.

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

(A) A writ of certiorari to set aside the order dated 25.12.2019 passed by the Superintendent of Police, Siwan (herein after referred to as Respondent no. 3) wherein punishment of one censure has been passed against the petitioner (Annexure 6) recorded in service book and it has been ordered that except the subsistence allowance given to the petitioner nothing will be paid.

(B) Any other relief or reliefs as deemed fit and proper in the facts and circumstances of the Petitioners' case.”

3. The petitioner was subjected to disciplinary



proceedings under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and it was concluded in holding the charges levelled against the petitioner were proved. On receipt of enquiring officer's report, the disciplinary authority proceeded impose penalty without resorting to furnish a copy of the enquiring officer's report and issuance of show cause notice as to why enquiring officer's reports shall not be accepted. The disciplinary authority imposed the penalty of censure and further withheld the salary of the petitioner for the unauthorized absent. The suspension period has not been notified while invoking Rule 97 of Bihar Service Code, although the petitioner has statutory remedy before the appellate authority.

Rule 97 of Bihar Service Code reads as under:

“97. (1) When a Government servant who has been dismissed, removed, or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order -

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and

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

[(2) Where the authority mentioned in sub-rule(1), is of opinion that the Government servant has been



fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be]

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe;

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

[(5) In a case falling under clause the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose;

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.]”

4. Having regard to the fact that there is violation of statutory provision in not providing second show cause notice along with enquiring officer's report and further petitioner has attained the age of superannuation on 31.12.2019. The matter is taken up for disposal in stead of resorting to prefer an appeal



before the appellate authority.

5. In the light of these facts and circumstances, the petitioner has made out a case to interfere with the order of penalty dated 25.12.2019 (Annexure-5). It is set aside.

6. The disciplinary authority is hereby directed to proceed from the defective stage and complete the enquiry proceedings within a period of two months from the date of receipt of this order. Further, the competent authority is directed to regulating the suspension period while invoking Rule 97 of Bihar Service Code in accordance with law. Such order shall be passed within a period of three months.

7. With the above observations, the instant petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.12.2021
Transmission Date	

