

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6717 of 2000

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Ram Kumar Rajak son of late Kameshwar Prasad, resident of village-Delha, P.O.-Station Gaya, P.S.- Civil Line Gaya, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Director General cum Inspector General of Police, Bihar, Patna.
3. D.I.G. of Police, Magadh Range, Gaya.
4. Superintendent of Police, Nawada.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Adv.
For the Respondent/s	:	Mr. Udai Shankar Singh, Adv. A.C. to G.A.-2

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 27-07-2015

This is an application seeking quashing of the order dated 21.11.1992 passed by the Superintendent of Police, Nawada whereby punishments of dismissal from service, has been imposed upon the petitioner, who at the relevant point of time, was posted as Havildar under the District Police, Nawada. The petitioner had preferred appeal against the said order, which came to be dismissed by the Deputy Inspector General of Police, Magadh Range, Gaya vide his order dated 31.12.1996. The Memorial filed by the petitioner before the Inspector



General-cum-Director General of Police, Bihar against the order of dismissal and the order passed by the appellate authority, was dismissed on 06.11.1999. These three orders passed by the Superintendent of Police Nawada, the Deputy Inspector General of Police, Magadh Range, Gaya and the Director General of Police, Bihar are under challenge in the present writ application.

Pursuant to the order of this Court the original records of the connected departmental proceedings have been produced before this Court by learned counsel appearing on behalf of the respondents-State of Bihar.

2. I have heard Learned counsel for the petitioner as well as learned counsel representing the State of Bihar.

3. A departmental proceeding was initiated against the petitioner with the issuance of chargesheet dated 06.08.1991 by the Disciplinary Authority, i.e. Superintendent of Police, Nawada containing altogether six charges to the following effect:

(i) The petitioner had proceeded for Compensatory Leave on 23.12.1989 for 12 days,

whereafter he was required to report on 05.01.1990. He, however, overstayed without any intimation to his Superiors.

(ii) On 14.04.1990, he left the place of his posting on the ground that he was sick and he thereafter did not return.

(iii) Through wireless messages, he was asked to report on duty. He, however, did not respond nor did he send any information in this regard.

(iv) He was transferred from Nawada to Muzaffarpur. He, however, did not comply with the order of transfer and he remained absent.

(v) He had the history of remaining absent unauthorizedly without any intimation or prior permission, with respect to which, several memos were earlier issued to him.

(vi) He is indifferent towards Police Service and has no interest in service.

4. It appears from the original records that notices were issued to the petitioner to participate in the departmental proceeding on several occasions. This is not in dispute that the petitioner did not participate in



the departmental enquiry and the Enquiry Officer i.e. the Sub-divisional Police Officer, Nawada, accordingly proceeded ex parte. He submitted the enquiry report on 17.07.1992, holding that all the charges against the petitioner stood proved. On receipt of the report of the Enquiry Officer, the Superintendent of Police, Nawada, the disciplinary authority issued to the petitioner a second show cause notice as to why he be not dismissed from service. It seems that the petitioner did not respond to the second show cause notice. The Disciplinary Authority by order dated 21.11.1992 imposed upon the petitioner, punishment of dismissal from service.

5. It is the case of the petitioner that he did not have any communication or notice about the initiation of departmental proceeding against him and he learnt about the order of dismissal only in the Year 1996, when he had gone to join in the District Police, Nawada on 23.01.1996. After having learnt about the said order of dismissal, the petitioner filed appeal against the said order. The Deputy Inspector General of Police, Magadh Range, Gaya, the Appellate Authority dismissed the said appeal by the order dated 13.12.1996. The petitioner

filed memorial against the two orders, which was dismissed by the Director General of Police as indicated above.

6. Learned counsel appearing on behalf of the petitioner, while assailing his impugned action of the respondents, has relied upon Rule 843 of the Bihar Police Manual and has contended that no step was ever taken to communicate to the Superintendent of Police of the district of which the petitioner was native as required under the said rule in case a police personnel, subject to the said provision, is found absent without information/permission from his place of posting. He has contended that had that been done, the respondents would have learnt about the real state of affairs petitioner's sickness and they would have proceeded accordingly. Rule 843 of the Bihar Police Manual having not been complied with, according to him, the ex parte proceeding against the petitioner stands vitiated. He has further submitted, referring to Rule 826 of the Bihar Police Manual that the Disciplinary Authority wrongly took into account, the previous conduct of the petitioner, for the purpose of imposing punishment of dismissal

from service, though there was no such charge framed against the petitioner.

7. He has further submitted, referring to the original records of the connected departmental proceedings that there is no evidence to show that notice with respect to the disciplinary proceeding, was, in fact, served upon the petitioner. He has submitted that if the respondents were finding it difficult to serve the notice through other processes, they could have adopted substituted mode of service of notice by publication in the Newspaper. In support of his submission, he has placed reliance upon a Division Bench decision of this Court reported in **1991(2) PLJR 324 (Thakur Ram Vs. The State of Bihar and ors.)**.

8. Learned counsel for the petitioner has further submitted that the punishment of dismissal from service on the allegation of unauthorized absence from service, in the facts and circumstances of this case, is too harsh and disproportionate to the alleged misconduct. He has contended that even if such misconduct against the petitioner is proved, the respondents ought to have imposed some alternative punishment and not the

extreme punishment of dismissal from service. He has placed reliance upon a decision of this Court reported in **1996(1) PLJR 129 (Nagendra Upadhayay vs. State of Bihar & Ors.)**.

9. He has also contended that the respondents miserably failed to prove the charge even in the absence of the petitioner as there was no proof before the Enquiry Officer to come to a conclusion that earlier also the petitioner had abstained from duty without any prior permission. He has, accordingly, submitted that findings of the Enquiry Officer are perverse and disciplinary action against the petitioner on the basis of such findings need to be interfered with, by this Court.

10. Learned counsel appearing on behalf of the respondents-State of Bihar, on the other hand, has submitted that all steps were taken to ensure service of notice upon the petitioner. He has referred to the original records produced before this Court to submit that despite several attempts, the petitioner could not be located for the purpose of notice of the departmental proceeding. Even his family members refused to furnish to the police personnel visiting his native place as regards his exact



location. In such circumstance, the Enquiry Officer rightly proceeded ex parte. He has further submitted that even the petitioner does not deny the fact that he remained absent unauthorizedly for the period in question. He has submitted that the finding recorded by the Enquiry Officer that the charge against the petitioner stood proved, cannot be said to be perverse for the reason that the said findings are based on some materials, which cannot be said so irrelevant that no person of ordinary prudence, could have reached to such conclusion. He has submitted that this Court may not enter into the sufficiency or inadequacy of evidence in the matter of departmental enquiry when the findings are based on some material. He has further submitted that the very fact that the petitioner approached the Disciplinary Authority and the Appellate Authority after more than three and half years of passing of the order of dismissal, shows that the petitioner was completely disinterested in the job, which he was performing and in the facts and circumstances of the case, the orders need no interference. He submits that the punishment of dismissal from service, in the facts and circumstances of

the case, cannot be said to be disproportionate to the misconduct proved against him, keeping in mind the nature of job and the petitioner's antecedent in Police Service.

11. I have perused the original records of the connected departmental proceeding. I do not find force in the submission made on behalf of the petitioner that no steps were taken to ensure service of notice or the departmental proceeding upon him. Several steps were taken. The Superintendent of Police, Gaya, the native district of the petitioner was also informed about his unauthorized absence. From the records, it appears that one Deep Nandan Singh, Civil Jamadar had visited his native place where met his mother and wife of the petitioner. He, however, could not be found for the purpose of serving of the memo of charge. Even family members refused to disclose the exact location of the petitioner. I also find from the records that the Enquiry Officer took several steps to ensure communication to the petitioner as regards pendency of the departmental enquiry so that he may have the opportunity to defend himself.



12. I do not find any substance in the submission made on behalf of the petitioner that there had been non-compliance of the provision under Rule 843 of the Bihar Police Manual. I find from the original records that through letter dated 06.08.1991, the Superintendent of Police, Gaya informed about the petitioner's unauthorized absence.

13. Appendix 49 of Volume III of the Bihar Police Manual 1978 contains the rules for proceedings for departmental punishment upon the persons governed by the Manual. Clause 1 of Appendix 49 deals with a situation where a person, governed by the said Bihar Police Manual has absconded or for other reasons, it is impracticable to communicate with him. Clause 1 of the said Appendix provides for communication of definite charge to the person charged, quickly, with the statement of allegation against him. There is note below Clause 1 of Appendix 49, which part of the said clause and reads thus:-

“Note.- This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to



communicate with him. But the order sheet and annexures to the proceeding file must record that attempts had been made to communicate with the accused at the address given in his service book through the Superintendent of his home district. The tendency of officers to run away on medical leave often occurs and the attention of Health Department should be drawn if any civil surgeon is not circumspect in granting medical certificates. However even such an officer on medical leave is not immune from disciplinary action. See rule 708 (b)."

14. On perusal of the report of the Enquiry Officer, and connected records of the departmental proceeding, I am not inclined to accept the submission made on behalf of the petitioner that the findings are without any basis or perverse. This is an admitted fact that the petitioner had remained absent unauthorisedly for quite long time. There is specific charge against the petitioner that even prior to issuance of the said chargesheet, he had abstained from duty unauthorisedly.



There is no averment in the writ application that such allegation is factually incorrect. Furthermore, it is evident that the petitioner had approached the Disciplinary Authority in 1996, though the order of dismissal was passed way back in the year 1992 itself. In order to explain this delay, there is vague statement in paragraph 16 of the writ application that he went to Nawada Police Lines to join the duty along with his medical certificates whereafter, he was supplied a copy of the discharge order. There is no explanation given in the writ application as to what prevented the petitioner from reporting the Disciplinary Authority earlier.

15. I am not satisfied with the submission made on behalf of the petitioner that the punishment is too harsh and disproportionate to less misconduct. The petitioner remained absent unauthorizedly for years together. This Court does not find this case to be a fit one where interference is required with the order of the Disciplinary Authority. I do not find any reason to interfere with the Appellate order or the order passed by the Director General of Police, Bihar.

16. This application is, accordingly,

dismissed.

17. There shall, however, be no order as to costs.

18. Let the original records produced by the State Respondents be returned to learned A.C. to G.A.-2.

(Chakradhari Sharan Singh, J.)

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