

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15844 of 2007

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Md.Waheb Khan @ Md.Waheb son of Late Md. Latif resident of village
Mubarak Chak, P.O. Purab Sarai, P.S. Muffasil, Munger

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat
2. The Director General cum Inspector General of Police, Bihar, Patna
3. The I.G. of Police, Patna Zone, Patna
4. The D.I.G. of Police, Magadh Range, Gaya
5. The S.P.Gaya

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 04-05-2015

Heard Mr. Singh for the petitioner and the counsel
for the State.

A supplementary counter affidavit has been filed on
behalf of respondent no.5. No rejoinder thereto has been filed.

The petitioner was serving as the Constable in the
Police Force and was posted at Sherghati. He absented from duty
without leave or notice for a period close to 291 days. A
departmental proceeding was initiated in which charge memo
was drawn up. The petitioner did not appear in the departmental
proceeding which proceeded ex parte. At the enquiry, witnesses
were examined and document(s) were produced. The Enquiry
Officer found the charge of absenting from the duty without
permission or leave proved. A show cause notice was thereafter
issued to the petitioner. This time the petitioner responded and



submitted his reply. On a consideration thereof the respondent S.P. Gaya inflicted punishment of dismissal on him vide order dated 11.05.2003 (Annexure-6). From the said order it appears that the petitioner took a plea of his mental ailment and hospitalization. The disciplinary authority in the impugned order found that no medical certificate was enclosed in support of the said stand. Aggrieved thereby, the petitioner filed an appeal. The appellate authority by a reasoned order dated 8th December, 2004 rejected the appeal. The same was challenged by the petitioner in this Court in CWJC No. 1072 of 2006. This Court by a proceeding dated 30.04.2007 (Annexure-9) disposed of the same granting him liberty to pursue his appeal/memorial against the said order. Subsequent thereto, the Director General of Police by order dated 14.09.2007 (Annexure-10) considered the memorial and rejected the same for the reasons stated therein. Hence the writ petition.

The contention of the petitioner is that he was not afforded reasonable opportunity to defend his case inasmuch as copy of the enquiry report was not furnished to him. The departmental proceeding stands vitiated for non grant of opportunity to appear thereat.

Counsel for the State, on the other hand, while supporting the order(s) contends that the petitioner wilfully



deserted/absented from the duty for a long period of time. In such circumstance, the order of suspension was passed. The departmental proceeding was thereafter initiated in which adequate opportunity was afforded by issuing notices but the petitioner did not chose to appear. On a consideration of the materials/evidence the Enquiry Officer found the charge proved against the petitioner whereafter a second show cause notice was issued which was responded by the petitioner. The authority considered the same and finding the same wholly unsatisfactory the order was passed. The disciplinary authority on perusal of the service records found that the delinquent was habitual deserter/absentee inasmuch as ten black marks were entered in his service record. This was done with a view to decide the quantum of punishment. After appraisal of his reply to the show cause notice the punishment was awarded. The appellate authority also considered in detail the appeal of the petitioner. It has been recorded in those orders that the petitioner took the plea of his mental ailment but the supporting medical prescription at the first instance was not furnished to the respondents. It has thus been contended that the application merits to be dismissed.

On a consideration of the materials on record it appears that only ground on which the orders have been

challenged is that the petitioner was not afforded an opportunity to participate in the departmental proceeding. From the records it appears that the petitioner was given opportunity to appear in the proceeding. In spite of notice he did not choose to appear and as such the departmental proceeding continued ex parte wherein oral and documentary evidence was adduced and the charge of absenting from duty without leave/permission was found proved by the Enquiry Officer. The report was submitted to the disciplinary authority whereafter a show cause notice was issued to the petitioner to which he replied/responded. Taking into account the facts stated in the reply to the second show cause notice the punishment was inflicted after satisfying himself about the quantum of punishment. The appeal and memorial filed thereafter were also dismissed by well-discussed order(s). The service to which the employee belonged calls for strict discipline. This Court, thus, finds no patent legal flaw with the impugned order(s),

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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