

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4599 of 2015

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Aasman Devi W/o Shree Markandey Mishra Resident of Village Panchhor,
P.O. + P.S. Riga, District Sitamarhi.

.... Petitioner/s

Versus

1. The Union of India through the Directorate General, Central Reserved Police Force, C.G.O. Complex, Lodhi Road, New Delhi.
2. The I.G. Communication, Directorate, Central Reserve Police Force, C.G.O. Complex, Lodhi Road, New Delhi.
3. The I.G. Bihar, Central Reserve Police Force, Patna.
4. The D.I.G. Bihar, Central Reserve Police Force, Patna.
5. The Commandant, 153 BN Battalion, Central Reserve Police Force, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vitesh Kumar Singh, Adv
For the Respondent/s : Mr. Sanjay Kumar(ASG)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 01-05-2015 Heard learned counsel for the parties as with

regard to the following relief prayed in this writ

application:-

*“For direction to the respondent /respondent’s to
recommended her son for boarding out from the Central
Reserve Police Force.”*

Learned counsel for the petitioner submits that the

petitioner being the mother of Santosh Kumar who has

joined the service of C.R.P.F on 28.07.2004 is anxious

for boarding out of her son from the service of C.R.P.F



as he is suffering from psychiatric problem. In this regard, he has also referred to certain documents to show that the son of the petitioner was categorized as S-5 which should have enabled him to get the order of boarding out. Learned counsel for the petitioner has also explained that such prayer for boarding out of the son of the petitioner has remained pending with the respondents for a period of almost five years.

In this case a counter affidavit has been filed by the respondents and they have straightway denied the eligibility of the son of the petitioner to board out on mental ground. Accordingly the son of the petitioner has been subjected to two departmental proceedings and the whole story of boarding out is only by way of excuse. Mr. Sanjay Kumar, learned Assistant Solicitor General in this regard has referred to the averments made in the counter affidavit to the effect that when one of the two departmental proceeding was sought to be concluded by way of service of inquiry report and the son of the

petitioner was asked to submit his comment/reaction to the inquiry report, he had threatened the authorities that he would commit suicide.

In this regard, he places reliance on the averments made in paragraph nos. 5 to 22 of the counter affidavit, which reads as follows:-

“That while serving in Signal Platoon of 153 Bn. No. 041717176 HC (RO) Santosh Kumar was arrested by Mahila Police Station, Sitamarhi (Bihar) on 8.4.2013 in connection with Case No. 19/12 dated 05.12.2012 under Section 323, 494, 498(a) of IPC and 3/4 Dowry Act and he was sent to Judicial Custody accordingly. Due to his arrest on 8.4.2013 and subsequent judicial custody the petitioner was placed under deemed suspension w.e.f. 8.4.2013 vide 153 Bn. Office Order No. P-VIII-7/2013-153-EC-2 dated 30.04.2013.

That then, after release from Jail No. 041717176 HC (RO) Santosh Kumar reported reported at 153 Bn. HQ. Motihari on 23.3.2014 at this own as per the Hon'ble High Court of Judicature, Patna order dated 6.3.2014 as intimated by RGS/153 Bn. Signal No. M.V.1/2014-R dated 26.03.2014.

That the departmental enquiry against him was also been initiated by Commandant-153 Bn CRPF vide Memorandum No. P-VIII-7/2012-153-EC-2 dated 3.12.2012 for the following two charges (i) He is serving as HC/RO in C.R.P.F. No. 041717176 HC (RO) Santosh Kumar of 3rd Signal Bn now attached with 153 Bn. Signal Platoon being member of the force under section 11 (1) of CRPF Act, 1949 has violated the code of conduct for civil servant under which he contacted plural marriage with another lady namely Smt. Arti Kumari without getting divorce from his legal and alive wife Smt. Anita Devi from the court of law (ii) He is serving as HC/RO in CRPF No. 041717176 HC (RO) Santosh Kumar of 3rd signal Bn now attached with 153 Bn signal platoon being member of the Force under section 11(1) of CRPF Act, 1949 has violated the Code

of Conduct for civil servant under which he suppressed the facts from his senior officers and the department about his plural marriage with a minor girl Arti Kumari in spite of his legal wife Anita Devi is alive. This act against the discipline of the force and punishable offence under section 11(1) of CRPF Act, 1949.

That an Enquiry Officer was detailed for conducting Departmental Enquiry by 153 Bn CRPF vide office Order No. P-VIII-7/2012-153-EC-2 dated 29.3.2014.

That accordingly Enquiry Officer has submitted the departmental enquiry proceeding on 20.07.2014 at 153 Bn. HQR, CRPF, where the charges as framed against him were proved fully. But before taking final decision on the Enquiry report submitted by the Enquiry Officer the Competent Authority i.e. Comdt. 153 Bn., adhering to the principal of natural justice handed over the copy of the report of the Enquiry Officer to the delinquent No. 041717176 HC (RO) Santosh Kumar on 23.07.2014 and gave 15 days time to submit his representation/reply if any as per the provisions contained. But instead of giving reply, he had threatened to commit suicide if his DE is not set aside. As his behave was not found normal, a written complaint has also been lodged to SHO, Town P.S. Motihari (Bihar) vide 153 Bn letter no. P-VIII-1/2014-153-EC-2 dated 14.08.2014.

That then the accused HC (RO) F/No. 041717176 Santosh Kumar was sent for review/treatment by Psychiatrist where he was admitted at CH CRPF Guwahati w.e.f. 6.8.2014 and discharged from CH CRPF Guwahati on 30.08.2014 with down grading of his medical SHAPE category to S-5(P) i.e., unfit for Duty as a Combatant in Armed Forces and was recommended invalidation from service as per existing Rules. Presently his final order on the DE is kept pending by 153 Bn. as per direction of IGP, Bihar Sector signal No. R.XIII-1/2014-EC-II dated 28.08.2014 as intimated by 153 Bn CRPF Signal No. P-VIII-1/2014-EC-II dated 13.09.2014.

That in addition to above, it is submitted that his 1st wife Smt. Anita Kumari also filed a Misc. Case No. 92/2011 against his husband No. 041717176 HC (RO) Santosh Kumar Signal Platoon of 153 Bn. for payment of interim family maintenance allowance of Rs. 8000/- p.m. and litigant fees of Rs. 10,000/- after deducting same from the salary of said petitioner. The Court order dated 6.2.2013 issued by Family Court,

Sitamarhi, (Bihar) also received in this office through DIG (Welfare) Dte. General, New Delhi letter No. W.V-181/2014-GRS dated 5.3.2014.

That then the case has been taken up with DIG (Law) Dte. Genl, New Delhi for obtaining further directions in accordance with above said Family Court order. Accordingly, as per directions received from DIG (Law) Dte. Vide his office Signal No. J-II-14/2014-LWP-7 (M/A) dated 9.4.2014 the case is a matter involved family dispute and the Department was not a party and petitioner was not drawing regular pay and allowances from 08/04/13 to December 2013 as he was under deemed suspension and he was drawing subsistence allowance during the above period moreover his pay from the month of January 2014 has been withheld and as such he is not drawing salary from January 2014, the department still awaits for further orders/directions from court as the amount could not be remitted from the pay of the petitioner at this stage.

That after that the court order dated 24.11.2014 passed by Principal Judge, Family Court, Sitamarhi where Director General, CRPF, New Delhi was a party was received in commandant 3rd Signal Bn CRPF. Accordingly, to comply with the court order dated 06.02.2013 and 24.11.2014 of Principal Judge, Family Court, Sitamarhi. The family maintenance allowance of Rs. 8000/- and litigant expenses of Rs. 2500/-(out of Rs. 10,000/- which is to be recovered in 4 equal installment) total Rs. 10,500/- has been deducted from the pay of No. 041717176 HC (RO) Santosh Kumar for the month of February, 2015 onwards and remitted to Smt. Anita Devi wife of HC (RO) Santosh Kumar in the Saving Bank A/C No. 4992000100041158 (Punjab National Bank) on 3.3.2015 through ECS.

That as regards, Departmental Rehabilitation Board in r/o No. 041717176 HC (RO) Santosh Kumar of this unit attached with 153 Bn. Signal Platoon, the application a/w connected documents, addressed to the director General, CRPF, New Delhi, submitted by Smt. Asman Devi, mother of 041717176 HC (RO) Santosh Kumar was forwarded to IGP (Communication) Dte. CRPF, New Delhi. In turn the case has been received back with direction to submit the case to concerned ops Sector. Accordingly, the case of rehabilitation/invalidation from service of No. 041717176 HC (RO) Santosh Kumar through DRB has been forwarded to the IGP, Bihar Sector, CRPF, Patna

(Bihar) vide Commandant 3rd Signal Bn. CRPF letter no. P.III-1/2014-EC-1 dated 12.03.2015. In turn, IGP, Bihar Sector vide their Signal No. R.II-4/2015-BS-Adm-II dated 19.03.2015 asked DIG Muzaffarpur Range, CRPF to direct 153 Bn to submit DRB case of the HC (RO) Santosh Kumar along with all required documents, Service Book, Confidential Card, Health Card, latest AME report, Medical/Clinical report etc. to Bihar Sector Hqr office for further needful.

That in reply to paragraph no. 1 of the writ application, it is stated that the petitioner is not entitled for any relief as prayed in paragraph no. 1 of the writ petition.

That the grounds as framed in paragraph no. 2 are devoid of any merit and stands no ground.

That the statement made in paragraph no. 3 of the writ application, it is stated that as per record No. 041717176 HC (RO) Santosh Kumar was enlisted in CRPF as CT (GD) on 28.07.2004 and remustered as HC (RO) w.e.f 22.10.2008 and presently posted in Signal Platoon of 153 Bn.

That the Statement made in paragraph no. 5 of the writ application need no reply.

That in reply to paragraph no. 6 of the writ application, it is stated that there neither any illegal act nor any torture has been done by the senior officers of the CRPF.

That in reply to paragraph no. 7 of the writ application, it is stated that the petitioner's son is undergoing treatment at CH Guwahati from the Psychiatrist for his mental treatment.

That in reply to paragraph no. 8, 9 and 10 of the writ application, it is stated that the petitioner's son HC (RO) Santosh Kumar has been sent to CH, CRPF, Guwahati for medical review/treatment from Psychiatrist where he was admitted on 06.08.2014 and was discharged from CH Guwahati on 30.08.2014 with down grading of his medical SHAPE category to S-5(P) i.e., Unfit for Duty as a Combatant in Armed Forces and was recommended invalidation from service as per existing Rules which is under process in this department.



Mr. Kumar, has also added that the case for invalidation from service of the petitioner's son is under process in the department and a decision would be taken shortly as per the Rules.

In presence of all these materials first and foremost question would be as to whether this writ application is maintainable at the instance of the mother who wants her son to board out. Let it be noted that the son is the employee and he is still alive. The son of the employee as noted above has been repeatedly committing misconduct and has been subjected to two departmental proceedings. The son of the petitioner can go and threaten the authorities that he would commit suicide if the departmental proceeding is continued against him. All these facts has fully explained in the aforementioned paragraphs of the counter affidavit would go to show that the mother of the petitioner has unnecessarily been dragged in by her son i.e. petitioner by way of lame excuse of mental illness petitioner. This

writ application in fact at the instance of the mother of the petitioner in relation to service condition of the son of the petitioner is ill advised and, accordingly, dismissed.

Nothing said in this order, however, will come in the way of the son of the petitioner to agitate his right before appropriate forum/Court.

(Mihir Kumar Jha, J)

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