

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.906 of 2014

IN

Civil Writ Jurisdiction Case No. 10561 of 2007

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Amarendra Guatam, constable 991410506 Ct/GD (dismissed), 116 Bn. CRPF, S/o
Sri Ram Pravesh Singh, Resident of village Sikarpur Chapra (Saran) P.S. Sonapur,
Distt-Saran

.... Appellant/s

Versus

1. The Union of India through the DGP, Central Reserve Force, CGO Complex,
R.K. Puram, New Delhi
2. The Inspector General of Police, CRPF, Bihar Sector, Patna
3. The Deputy Inspector General of Police, CRPF, Group Centre Muzaffarpur
4. The Commandant, 116 Bn., CRPF, Dhaligaon, New Bogaigaon, Assam
5. The enquiry Officer, Domestic Enquiry, 116 Bn. CRPF, Dhaligaon, New
Bogaigaon.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Pd Singh No.1

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 23-06-2016

The appellant has put to challenge, in the present appeal
filed under Clause 10 of the Letters Patent of this Court, an order,
dated 16.01.2014, passed by a learned single Judge of this Court in
CWJC No. 10561 of 2007, whereby his application filed under Article
226 of the Constitution of India came to be dismissed.

2. The petitioner was a Constable in 116 Battalion of the
Central Reserve Police Force. On the charge of serious misconduct,
he was dismissed from service by an order, dated 22.06.2006, passed



by the Commandant 116 Battalion CRPF, Dhaligaon, Bongaigaon (Assam). He, thereafter, preferred a departmental appeal before the Deputy Inspector General, Group Centre, C.R.P.F., Muzaffarpur (Bihar) against the order of dismissal. It came to be dismissed by an order, dated 02.11.2006. Revision petition preferred against the order of the disciplinary authority and the appellate authority also stood dismissed by an order, dated 29.03.2007 passed by the Inspector General of Police, Bihar Sector, Patna. Challenging these orders passed by the authorities of the Central Reserve Police Force, the petitioner filed a writ application under Article 226 of the Constitution of India giving rise to CWJC No. 10561 of 2007, which has been dismissed by the order under appeal, dated 16.01.2014.

3. The main plea which was taken in the writ proceedings on behalf of the petitioner was that the impugned action of the respondent was not in violation of the principles of natural justice inasmuch as, an *ex-parte* enquiry was held without affording the petitioner proper opportunity of being heard.

4. Learned single Judge has dismissed the writ application by a detailed order taking into account the gravity of the charge of misconduct framed against the appellant and the reasons which compelled the disciplinary authority to hold an *ex-parte* enquiry.

5. Learned counsel appearing on behalf of the appellant has



attempted to convince this Court that it was because of the mental ailment which the petitioner was suffering from and which was attributable to discharge of his hazardous official duties, in adverse situation that he could not participate in the departmental proceeding. Reliance has been placed in this regard on various statements made in the writ application and the documents/prescriptions in support of his claim that the appellant was suffering from mental disorder.

6. In the background of these basic facts, we are required to consider where the order of learned single Judge, dated 16.01.2014, under appeal needs interference in an *intra* court appeal.

7. Before we proceed to enter into the question of correctness or otherwise of the order under appeal, we have kept in our mind that the scope of interference in an *intra* court appeal is limited and finding of fact arrived at by a learned single Judge will not require interference unless it is shown to be palpably incorrect and erroneous on the face of it.

8. Following is the gist of charge framed against the appellant for which he was proceeded against departmentally:-

“the said No. 991410506 CT/GD Amrendra Gautam of F/116 Bn. CRPF while functioning as Constable/GD has committed an act of gross misconduct and disobedience of orders in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 read with Rule 27 of the CRPF Rules 1955, in that while undergoing punishment of 10 days

confinement to lines w.e.f. 19/9/05 to 28/9/05 at Bn HQ/116 Bn CRPF Dhaligaon (Assam), he deserted from the camp on 21./9/05 at about 1030 hrs and reported at his own on 4/10/05 at 1700 hrs at Bn HQ/116 after absenting himself from duty for 14 days. Again he deserted from campus on 12/10/05 at about 1500 hrs and reported at this own on 04/01/06 at 1500 hrs after absenting himself from duty unauthorizedly for 84 days which is prejudicial to the good orders and discipline of the Force.”

9. It is evident from the charge itself that the departmental proceeding was initiated when he was already undergoing punishment of ten days confinement to lines with effect from 19.09.2005 to 28.09.2005. During the period when he was under confinement he deserted the camp on 21.09.2005 and thereafter reported on 04.10.2005, after absenting himself from duty for 14 days. He is said to have thereafter deserted the campus on 12.10.2005 and reported on his own on 01.01.2006, after absenting himself from duty unauthorizedly for 84 days.

10. This is to be noted that punishment of confinement of the appellant was with respect to his unauthorized absence from the training camp which was subsequently regularized by allowing him extra-ordinary leave and accordingly he was treated to be on leave without pay, for the period of overstay.

11. There is no dispute that the charge was communicated to the appellant, who submitted his reply to the charge and



participated in the departmental enquiry. Subsequently, he absented himself from the departmental enquiry. There is no dispute that several notices were sent to the appellant at his home address by the Inquiry Officer for his appearance in the departmental proceeding but neither he appeared in the departmental proceeding nor did he send any response to the notices. It further transpires that father of the appellant had responded to the said notices making a request to stay of the departmental proceeding on the ground that the appellant was suffering from mental disorder.

12. Since the appellant did not participate in the departmental proceeding, on the basis of the materials on record, the Inquiry Officer submitted his report holding the appellant guilty of the charge framed against him.

13. Agreeing with the report of the Inquiry Officer, the disciplinary authority imposed punishment of dismissal from service. The appellate authority and the revisional authority dismissed the petition for appeal and revision petitions respectively, filed by the appellant.

14. Learned single Judge, upon considering the pleadings on record which included the counter affidavit filed on behalf of the respondents, did not find any irregularity warranting interference with the impugned disciplinary action and, accordingly, dismissed

the writ application.

15. Mr. Suresh Pd. Singh, learned counsel appearing on behalf of the appellant, has submitted that the decision to take harsh action of imposing punishment of dismissal from service suffers from the vice of *bias* and *malafide*. According to him, things were alright till Mr. Sudhakar Upadhyay was the Commandant and the disciplinary authority of the petitioner, but the situation changed soon after the new incumbent joined as Commandant upon transfer of the said Sudhakar Upadhyay. It has been submitted that the disciplinary authority put the petitioner in an orderly room and without following the procedure, inflicted upon him punishment of 10 days line confinement with one hour pack drill. He also contended that the petitioner was suffering from hyper tension and for which he was treated in the CRPF Hospital and because he was not in fit state of mind, he left the camp on 21.09.2005.

16. We cannot go into the allegation of *bias* or *malafide* as made against the disciplinary authority since at no point of time he was impleaded as a party respondent. There is no material to substantiate the such allegation on records of the disciplinary proceeding. Learned single Judge has rightly not gone into this aspect of the matter.

17. Mr. Suresh Pd. Singh, has, however, attempted to



convince us that punishment of dismissal is too harsh punishment and it is shockingly disproportionate to the charge levelled against him. The punishment of dismissal from service cannot be said to be disproportionate to the charge framed against the appellant which came to be proved in a departmental enquiry. We do not find that any case of violation of principles of natural justice is made out since the appellant was, admittedly, given due opportunity to defend his conduct, which he had initially availed but subsequently abandoned.

18. It is settled principle that while exercising power of judicial review under Article 226 of the Constitution of India over quasi-judicial or administrative action, this Court is required to see the legality or otherwise of the procedure adopted for reaching to such decision and not the decision itself unless it is beyond jurisdiction and patently erroneous. We do not find that such case is made out in the present proceeding.

19. Mr. Singh has lastly attempted to submit that imposition of punishment of dismissal from service amounts to double jeopardy inasmuch as for the same reason, he was confined to lines by way of punishment of ten days. The said submission cannot be accepted. The petitioner was proceeded against on a misconduct of deserting the camp, while undergoing punishment of

confinement to lines. The punishment of confinement was imposed for a different misconduct of deserting the training course, though subsequently the period of his absence from training camp was regularized.

20. We do not find any infirmity in the order, under appeal passed by learned single Judge, warranting interference by this Court.

21. This appeal is, accordingly, dismissed.

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

(Chakradhari Sharan Singh, J)

I.A.Ansari, ACJ:-I agree.

(I.A.Ansari, ACJ.)

ArunKumar/-