

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.99 of 2014  
Arising out of  
Civil Writ Jurisdiction Case No. 6497 of 2010**

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Diwan Firoj Khan, Son of Naiemuddin Khan, Resident of Village - Naughara,  
P.O. And P.S. Chainpur, District - Bhabhua ( Bihar )

.... .... Appellant

Versus

1. The State of Bihar Through The Home Secretary Government Of Bihar  
2. D.I.G. BMP, North Division Muzaffarpur  
3. Commandant, Bihar Military Police, IX, Jamalpur

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Gyandra Kumar Shukla, Advocate

For the Respondent/s : Mr. Manoj Kumar Ambastha, GA 14

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

**Date: 06-04-2016**

The challenge in the present Letters Patent Appeal is to an order dated 15.09.2011 passed in CWJC no. 6497 of 2010, whereby the writ petition filed by the appellant challenging the order of his dismissal vide order dated 22<sup>nd</sup> November, 2006, has not been interfered with.

The appellant while working as Constable in Bihar Military Police abstained from duty for 340 days. After completion of disciplinary proceeding, the order of dismissal from service of the appellant was passed by the Commandant, BMP –X, Jamalpur, on 22<sup>nd</sup> November, 2006. The appeal against the said dismissal of service

was also rejected on 29<sup>th</sup> May, 2009. It was thereafter the appellant invoked the writ jurisdiction of this Court.

The learned Single Judge dismissed the writ petition holding that there is no procedural irregularity in the conduct of the disciplinary proceeding. The appellant has not cross-examined the witnesses and consequently the order of dismissal was not found to be suffering from any infirmity.

Learned counsel for the appellant argued that the appellant was suffering from illness, therefore, he could not attend his duties and could not appear during the course of disciplinary proceedings. The entire conduct of the proceedings is one-sided which affects the rights of the appellant. The order of punishment imposed on him, is harsh and disproportionate to the misconduct committed by him.

We have heard learned counsel for the parties and do not find any merit in the appeal. The order of punishment shows that the notices of enquiry were served upon the father of the appellant when the appellant was not available at his house. Later, the disciplinary authority called the appellant and noticed that the appellant intentionally evaded receipt of notice sent through post. Ultimately, notice was served through the special messenger, Mithilesh Kumar, on 26.3.2006 fixing 1<sup>st</sup> April, 2006 as the date before the Enquiry Officer. But again, the appellant did not appear in the enquiry



proceedings and sought 20 days' time. Thereafter, the date of further proceedings was fixed on 19.4.2006, for which notice was served on 5<sup>th</sup> April, 2006. On the date fixed the Enquiry Officer could not be present for his pre-occupation, Next hearing was fixed for 2.6.2006. An opportunity was given to the appellant to cross-examine the witnesses but he refused to cross-examine the witnesses but put his signatures. Thereafter, another opportunity was given to him to lead his defence evidence which notice was received on 10<sup>th</sup> July, 2006. On 20<sup>th</sup> July, 2006 written explanation was submitted by the appellant to the effect that he was suffering from mental illness. Thereafter, notice was served on 22<sup>nd</sup> November, 2006 which was received by the appellant personally on 30.11.2006 but no reply was submitted thereafter. Another opportunity was given to him vide notice dated 28<sup>th</sup> March, 2007, which was served on him but since no reply was submitted. In view of the said fact, the order of dismissal was passed on account of absence from duty.

A brief resume of the proceedings taken out by the disciplinary authority shows that adequate opportunity was afforded to the appellant at all stages. It is the appellant who failed to appear and defend himself in the disciplinary proceedings. There is no procedural irregularity in the conduct of the proceedings. Since there is no procedural irregularity or illegality, we do not find any error in

the order of the disciplinary authority which may warrant any interference in the present appeal.

This appeal is accordingly dismissed.

**(Hemant Gupta, J)**

**(Ahsanuddin Amanullah, J)**

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