

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1145 of 2015

IN

Civil Writ Jurisdiction Case No. 15531 of 2007

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Constable 364 Ram Bilash Ram Son of Shri Jugeshwar Ram resident of village -
Kashwai, P.O. Kashwai, P.S. Lakhnarur, District - Madhubani

.... Appellant

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. Director General of Police - cum - Inspector General of Police, Bihar, Old Secretariat, Patna
3. The Deputy Inspector General of Police (Railway), Bihar, Patna.
4. The Superintendent of Police (Railway), Muzaffarpur
5. The Deputy Superintendent of Police (Railway), Sonapur, Chapra
6. Shri Vijay Kumar, Officer - in - Charge, Police Station Maharajganj, District - Siwan

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ebrahim Kabir & Mrs. Shruti Sinha

For the Respondent/s : Mr. P.K. Verma, AAG 3

Dr. Mankeshwar Tiwary, A.C. to AAG 3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 30-11-2016

I.A. No. 4817 of 2015

This interlocutory application has been filed for
condonation of delay of 172 days in filing this appeal.

2. Upon hearing learned counsel for the appellant and
learned Additional Advocate General III for the State and on
consideration of the facts and circumstances of the case, the delay in
filing the appeal is condoned. I.A. No. 4817 of 2015 is, accordingly,



disposed of.

3. The present appeal is directed against the order dated 25.06.2014 passed by a learned Single Judge of this Court in C.W.J.C. No. 15531 of 2007 by which the writ application has been dismissed after holding that all the three authorities have recorded concurrent findings of facts about grave misconduct committed by the petitioner-appellant and in view of the proved grave charge of misconduct, the order of punishment passed against the appellant cannot be said to be disproportionate and the appellant had been given reasonable opportunity to defend himself in the departmental proceeding.

4. The writ petitioner-appellant, at the relevant time, was serving as a Constable since the year 1980 and a departmental proceeding was initiated against him on the basis of a complaint filed by the Officer-in-charge of Maharajganj police station. In the memo of charge framed against the petitioner on 10.05.2004 it was stated that while he was posted at G.R.P. Muzaffarpur, his services were requisitioned for election duty at Siwan in the year 2004. It is alleged that in course of the same he came to the residence of the Officer-in-charge of Maharajganj police station on 26.04.2004 after midnight at about 01.20 A.M. in an inebriated condition and demanded a vehicle to proceed to the district headquarters at Siwan and upon refusal, the appellant is said to have hurled abuses at the Officer-in-charge and



took out his Carbine for killing him. When the Officer-in-charge in order to save himself closed his window, then he tried to brake open the door of the house. It is also alleged that prior to that he had also misbehaved with the three home-guard constables and one Wireless A.S.I. Sheo Shankar Singh, who were posted at the said police station. Somehow with the help of other home-guards and police personnel he was overpowered and his carbine was taken away from him. Thereafter he was brought to the police station but there also instead of sitting, as directed, he started to destroy the articles kept there at the police station and indulged in scuffle with the other police personnel resulting in certain injuries to him also. Thereafter he was forwarded to the government hospital for his treatment where the doctor found him to be completely in a drunken condition.

5. For the above charges, the appellant was subjected to a departmental proceeding. Memo of charges was served upon him and after the witnesses were examined on behalf of the prosecution, the enquiry officer found the appellant guilty of all the charges. After following further procedure, he was issued a second show cause notice and ultimately he was dismissed from service by order dated 29.10.2004 passed by the Superintendent of Police (Railways), Muzaffarpur in Departmental Enquiry Case No. 38 of 2004. Appeal filed against the said order dated 29.10.2004 was also rejected by the



Deputy Inspector General of Police (Railways), Bihar on 23.02.2006. Thereafter the memorial filed by the appellant against the order 23.02.2006 was also dismissed by the Director General of Police, Bihar, Patna by order dated 16.01.2007.

6. Before the learned Single Judge, the stand taken by the appellant was that the appellant was not given reasonable opportunity of hearing and the principles of natural justice was not strictly followed. The learned Single Judge, however, noted that there has been no violation of the provisions of the Police Manual or any rule governing the service conditions of the appellant. It was also noted that the enquiry officer gave him full opportunity to participate in the departmental proceeding for proving his innocence but the petitioner failed to prove his innocence and produce the relevant materials for disproving the charges framed against him. Thereafter a second show cause notice was also issued to the petitioner and finally an order of punishment was passed. The learned Single Judge has also noted that the appellant is in the habit of committing misconduct. Prior to this incident, the appellant was also subjected to several disciplinary proceedings and he was awarded major punishment six times and minor punishment six times.

7. Learned counsel for the appellant has again sought to assail the departmental proceeding as having been conducted in



complete violation of the principles of natural justice for which he sought to bring to our notice the order dated 07.08.2004. The order of the departmental proceeding dated 7.8.2004 passed in course of the departmental enquiry states that the proceedings had been adjourned to 21.08.2004. However, on 17.08.2004 the proceeding was adjourned from 21.08.2004 to 30.08.2004 when it is alleged that the witnesses were examined behind his back and the disciplinary proceeding was concluded.

8. From a perusal of the different orders passed in the departmental proceeding, it is clear that the first order fixed the date of next hearing on 07.08.2004 and directed to issue notice to the delinquent and the witnesses. Thereafter the next order-sheet shows that for certain reasons beyond control, the proceeding could not be taken up on 07.08.2004 and fixed the next date on 21.08.2004. Thereafter on 17.08.2004 itself the date was modified from 21.08.2004 to 30.08.2004. It was on 30.08.2004 that the appellant did not turn up and the witnesses present on that day were examined. Thus, it is evident that it is not a case of repeated adjournment being granted by the disciplinary authority when the appellant was present as alleged by the appellant, rather only on a single date the proceeding could not be held.

9. Learned counsel for the appellant has also sought to



assail the impugned order by saying that the three home-guard constables who were present there at the time of occurrence have also not been examined.

10. From a perusal of the records and consideration of the submissions of learned counsel for the appellant as also the order under appeal, we do not find that learned counsel for the appellant has been able to make out any case of violation of the principles of natural justice in the conduct of the departmental proceeding rather it appears that the appellant himself failed to appear before the Enquiry Officer, even though he was aware of the same and it is not open to learned counsel for the appellant to argue that when on the said date he was not present, the witnesses examined ought to have been recalled for cross examination on the next date.

11. We do not find any material on record to show that the appellant had asked for recall of the witnesses for cross examination. Admittedly he had made no such prayer for recall of witnesses for their cross examination. At this stage learned counsel for the appellant states that this plea was for the first time raised at the stage of appeal before the Deputy Inspector General of Police and was not raised prior to that. It is not known how the appellant can escape the rigors of punishment of dismissal at the appellate stage on such ground when this plea was not raised at the time of continuance of the



departmental proceeding.

12. We further find that the appellant had been repeatedly inflicted punishment, i.e., six major punishments and six minor punishments in the course of his service career which also goes against him and shows that he is a habitual offender and an indisciplined person who is unfit to remain in a disciplined force.

13. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

Amin/-

(Birendra Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

