

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15626 of 2008

=====

Kalpana Devi, Wife of Late Dharambir Prasad, Resident of Village – Phulahart
Potan, P.O. – Potan, P.S. – Muffasil, District – Munger.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The D.G. cum I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police, B.M.P., Bihar, Patna.
4. The Commandant, B.M.P. Bodh Gaya, Gaya

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Teg Bahadur Singh, Advocate.
Mr. Nirmala Kumari, Advocate.
Mr. Rakesh Kumar Singh, Advocate.
Mr. Binay Kr.Singh, Advocate.

For the Respondents : Mr. Kameshwar Prasad Gupta, G.P. 10

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 28-01-2017

The petitioner seeks quashing of the order of dismissal of her husband dated 04.01.2002 (Annexure-5) passed by the Commandant, Bihar Military Police 18, Bodh Gaya as contained in Memo No. 41. The petitioner also seeks quashing of the order passed by the DIG dated 04.03.2003 (Annexure-6) and the order passed by the DG Police in Memorials of the husband of the petitioner dated 05.08.2004 (Annexure-7).

2. The facts which are relevant for the disposal of this writ petition are as follows:

The petitioner is the wife of Dharambir Prasad who was a constable in BMP 18. Since Dharambir Prasad died, the petitioner



filed the present writ petition for the relief sought for as above. Dharambir Prasad was charged on 04.05.2001 for overstay on leave. Dharmbir Prasad was on four days leave from 07.05.2000 to 11.05.2000. Dharambir Prasad did not join his service on 12.05.2000. Dharambir Prasad was informed on 24.06.2000 vide Memo No. 1725 to be present on duty, but he did not turn up. Again vide Letter No. 2604 dated 12.09.2000 he was informed through registered letter, but even then he did not join his duty and consequently he was charged for overstay on leave. Dharambir Prasad joined on 16.04.2001, with a medical certificate that he is suffering from Sciatica from 10.06.2000 to 15.04.2001. A departmental proceeding was initiated. Dharambir Prasad did not participate in the departmental proceeding. The enquiry officer found him guilty and accordingly Commandant, BMP 18 vide order dated 31.12.2000 as contained in Memo No. 41 dated 04.01.2002 dismissed Dharambir Prasad, the husband of the petitioner for willfully stayed without information for 348 days. The husband of the petitioner filed appeal before the Deputy Inspector General, Military of Police, Central Division, Patna and he also vide Memo No. 392 dated 04.03.2003 dismissed the appeal. Thereafter, Dharambir Prasad, the husband of the petitioner preferred the memorials before the Director General, Bihar Military Police who confirmed the order of the disciplinary authority and found that



Dharambir Prasad was habitual in overstaying. Dharambir Prasad also moved to this Court in CWJC No. 11279 of 2003, for setting aside the order as contained in Annexure-5 and the aforesaid writ petition was dismissed as withdrawn with liberty to the petitioner to pursue the memorials filed by him.

3. Learned counsel for the petitioner submits that the husband of the petitioner died after dismissal of memorials, but no proper opportunity was given to the husband of the petitioner during course of departmental enquiry. The witnesses were examined without informing the date of examination. No enquiry was held under Rule 843 of the Police Manual with regard to overstay of the husband of the petitioner from the Superintendent of Police on his native village. The husband of the petitioner completed 14 years of his service and thereafter died. Therefore, the case of the petitioner be sympathetically considered and order of dismissal may be set aside. It is further submitted that DIG, Kosi region, Saharsa in case of 65 Maddan Poddar for his overstay set aside the order of punishment, as no enquiry was held under Rule 843 of the Police Manual. The order is contained in Annexure-3 of the writ petition. The case of the petitioner has been discriminated. Learned counsel for the petitioner further submits that the order of dismissal for overstayal is disproportionate to the charge and he placed his reliance on a



judgment of *Nagendra Upadhayay v. State of Bihar* reported in 1996 (1) P.L.J.R. It is evident from the charge, itself, that the petitioner proceeded for four days casual leave from 07.05.2000 to 11.05.2000 but he did not join his duty. Notices were issued to the husband of the petitioner, but he did not join. Only on 16.04.2001 he joined his duty with a prescription of Dr. Harichand Pd. Chaurasia, D.M.S. Patna who certified that Dharambir Prasad, Constable No. 577 was suffering from Sciatica from 10.06.2000 to 15.04.2001 but at the same time it is admitted that the petitioner after his overstay did not inform the Commandant of BMP-18 about his illness and treatment by a doctor at Patna. Even after initiation of departmental proceeding Dharambir Prasad did not participate nor produce any documents in support of his treatment and consequently he was found guilty for overstayal of 348 days.

4. I find no force in the contention of the petitioner that the enquiry was not held in accordance with law and no enquiry under Rule 843 of the Police Manual was held, as the Dharambir Prasad never raised any objection during the course of departmental proceeding nor took such grounds in appeal of his memorials before the competent authority.

5. In the case of *Nagendra Upadhayay v. State of Bihar* reported in 1996 (1) P.L.J.R. (supra) he was overstayed for 62 days



and on such he was terminated from service. It was found that the punishment was harsh and disproportionate, but on the fact of the present case, it appears from the order on the memorials of the husband of the petitioner (Annexure-7), that the petitioner served in B.M.P. for 14 years including the period on which he remained willfully absent for fifteen times and during that period he over stayed for 931 days without giving information to the concerned authority about his overstayal. Over and above Dharambir Prasad the husband of the petitioner deserted the force for six times and remained absent for 652 days. Dharambir Prasad was habitual to remain on unauthorized absent.

6. Therefore, I find that the order of punishment inflicted on the husband of the petitioner does not require any interference and accordingly the writ petition is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2017
Transmission Date	

