

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.574 of 2017

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1. Kaushal Kumar Singh S/o Sri Rajdeo Singh Resident of Village + P.O. Rasauli,
P.S. Panapur, District-Chhapra

.... Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Home (Police) Deptt., Patna
3. The Commandant, Bisbesh Gan, Bihar Home Guard, Bihta, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. Rishi Raj, Adv.

For the Respondent/s : Mr. Md. Irshad, A.C. to S.C.1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-07-2017

Heard Mr. Rajendra Prasad Singh, learned Senior counsel for
the petitioner and Mr. Md. Irshad A.C. to S.C.1 for the State.

The facts leading to the present writ petition is rather peculiar.
Though the petitioner chooses to question an order dated 16.3.2011
passed by the Commandant, Special Battalion, Bihar Home Guards,
Bihta impugned at Annexure-3 whereby and whereunder he has been
discharged from service after a lapse of 6 years but then there are
valid reasons for the belated action.

The petitioner a discharged Home Guard, succeeded in a
selection process initiated by the State Government in its Home
(Special) Department and was appointed as a Constable vide a
selection process initiated pursuant to Advertisement No.2 of 2009. It
is while the petitioner was working as such and with no issue of
misconduct arising from his present service that when it came to a



knowledge of the respondents that this petitioner was discharged from service as a Home guard that a disciplinary proceeding has been initiated against the petitioner for his retention in service as a Constable in the Home (Police) Department, under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the disciplinary rules'). It is not this initiation of a disciplinary action by the Home (Police) Department which is put to question in this writ petition rather it is the foundation on which the disciplinary action has been initiated, i.e the order of discharge as a Home Guard, which is put to challenge herein.

I have heard learned counsel for the parties and I have perused the records.

It is the argument of Mr. Singh learned Senior counsel for the petitioner that the order of discharge being stigmatic, it has been passed without opportunity to the petitioner to defend his case except a show cause which has been duly replied. He submits that the extreme penalty of discharge has been passed without drawing any formal proceedings as mandated under 'the disciplinary rules'. The argument has been contested by learned State counsel in reference to Rule 7 (iv) of the Bihar Home Guard Rules, 1953 (hereinafter referred to as 'the Home Guard Rules') and in reference thereto it is the submission of learned State counsel that no full fledged proceeding need be conducted in a case of discharge.



It is not in dispute that no formal proceeding has been conducted in the present case rather the documents on record would support that on an allegation made against this petitioner and some others as regarding leading an indisciplined lot and obstructing the others from attending the parade that a show cause notice was served vide memo no. 272 and Memo No.624 dated 17.6.2010 and 23.9.2010 present at Annexure-1A and 1 respectively. The petitioner filed an exhaustive reply denying the allegations and specifically stated that he was not a part of disobedience. A copy of his reply is present at Annexure-2. It is in consideration of the reply that the impugned order of discharge has been passed against the petitioner bearing Memo No.172 dated 16.3.2011 and feeling aggrieved he is before this Court.

As I have already observed that there is no dispute that no formal proceedings were conducted for the alleged misconduct rather it is by asking simple show cause vide Annexures-1 and 1A and in consideration of the same present at Annexure-2 that the order of discharge under Rule 7(iv) of 'the Home Guard Rules' has been passed.

It is now to be seen whether or not the order of discharge would sustain the legal prescriptions.

Rule 7 of 'the Home Guards Rules' deals with the issue of discharge and at (iv) enables the State Government, the Inspector General or any other authority on whom the power is delegated, to



discharge a home guard for any other special reason to be recorded in writing. Rule 7(iv) of 'the rules' vests jurisdiction in the competent authority to discharge a Home Guard in situations other than physical fitness, attainment of age of 41 or on his own request. It is thus a special power vested in the authority competent to do so to discharge. If it is a case of a discharge simplicitor for the reasons present in rule 7, may be the process of issuance of show cause before the purported action is taken, would be sufficient but then rule 7(iv) cannot be read in isolation in a case where the foundation for discharge is resting on an alleged misconduct. It is not in dispute that the order of discharge is resting on act of alleged misconduct by the petitioner and some others.

For the purpose this Court would refer to the prescription provided under Rule 16 of 'the Home Guards Rules' which relates to imposition of punishment, to spell out the distinctive powers.

Rule 16(2) very specifically provides that where an authority intends to impose a penalty of suspension, black mark, stoppage of increment, reduction in rank, removal or dismissal, the proceedings would be regulated by the general orders of the State Government issued from time to time. Obviously the reference is to 'the disciplinary rules' so framed in this regard.

In my opinion the special power so vested in the authority competent to discharge a Home guard under Rule 7(iv) is in



circumstances which calls for special reason and which has to be a reason other than those present under Rule 16. Where the nature of the order amounts to a dismissal or removal from duty for an act of alleged misconduct, certainly the matter would travel out of the provisions of Rule 7 and sail into the provisions of Rule 16 where the authority competent to discharge a Home guard would be legally and statutorily bound to follow the procedure provided under ‘the disciplinary rules’ which finds recognition under Rule 16(2)(iii).

The short cut route thus adopted by the Commandant to discharge the petitioner from service by forfeiting his right to defend himself against the alleged act of misconduct, is a denial of reasonable opportunity to the person concerned, violative of the principles of natural justice and is de hors the principles underlying the service rules.

For the reasons and discussions aforementioned, the order of discharge passed against the petitioner as found in the order dated 16.3.2010 passed by the Commander, Bihar Special Battalion Bihar Home guards impugned at Annexure-3 cannot be upheld as it is apparently in teeth of the provisions under Rule 16 of ‘the Rules’ and is accordingly quashed and set aside.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.08.2017
Transmission Date	NA

