

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.987 of 2014
IN
Civil Writ Jurisdiction Case No. 7540 of 2007**

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1. Kanhaiya Ram S/O Sri Padarath Ram, R/o Vill.- Makhdumpur, Dumra, P.O.-
Barka Dumra, P.S.- Ara Mufasil, Dist.- Bhojpur

.... Appellant/s

Versus

1. The Union of India through the Inspector General of Police, B/S, CRPF, Patna
(Bihar)
2. The Deputy Inspector General of Police, CRPF, Patna (Bihar)
3. The Principal, R.T.C.-II, CRPF Awari Chennai
4. The Additional Deputy Inspector General of Police, GC CRPF, Mokamaghat,
Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Awadh Bihari Ojha, Sr. Advocate
Mr. Bharat Bhushan
Mr Nitesh Kumar
Mr Anand Vardhan

For the Respondent/s : Mr. Sanjay Kumar, Asst. S.G.
Mr Anjani Kumar Sharan, CGC

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-05-2017

Writ application of the petitioner, who is appellant
herein, was dismissed on 22.4.2014. Aggrieved by the said dismissal,
the Letters Patent Appeal has been preferred seeking setting aside the
order of the learned Single Judge.

2. Appellant was appointed as a Constable in Central
Reserve Police Force on 10.5.2006. While he was still on probation,
his antecedents were verified on the basis of declaration made by him



where a report was received that he was involved in a criminal case, the fact not declared. Subsequently, an explanation was sought to be given that it was a petty matter relating to dispute between two families, which led to filing of a false criminal case, which got compromised as well.

3. Since the appellant was on probation, due to the said mis-declaration, the respondent authorities in exercise of power under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, decided to terminate the service of the appellant forthwith and in lieu thereof he was paid a month's salary and allowances to which he was entitled. It was this decision, which was subject matter of challenge in the writ application.

4. Plea was taken that in terms of Rule 5 (1) of Central Civil Services (Temporary Service) Rules payment should have been made simultaneous with the termination. There is evidence to show that the payment was extended to the appellant after about 16 days from the date of termination. This fact has also been now certified when a supplementary counter affidavit has been filed on behalf of CRPF.

5. Taking the law into consideration and keeping in mind that the appellant had not acquired a permanent status since he was still under training and he had committed a serious error of



judgment by suppressing the fact of his being involved in a criminal case not having been explained in the declaration, the decision of the respondents to terminate his service was not found to be erroneous by the learned Single Judge.

6. Since there is no law which says that the payment in lieu of notice must accrue to a temporary government servant simultaneously with the order of termination. In fact, the law is otherwise. In case of ***Brij Mohan Singh V. Union of India, (2002) 9 SCC 453***, the Hon'ble Apex Court had this to say :

“4. So far as the contention in relation to non-compliance with the provision of Rule 6 is concerned, firstly, the same does not appear to have been taken before the Tribunal. Secondly, on a plain reading of the provision of Rule 6 and the proviso thereto it is clear that it would not vitiate the order of termination ipso facto and the employee will be entitled to claim a sum equivalent to the amount of basic pay plus dearness allowance for the period of notice at the same rate at which he was drawing monthly before the termination or, as the case may be, for the period by which such notice falls short of one month. Mr Mohanty urged before us that the note to the aforesaid rule, as well as the form indicated therein support the proposition that the payment of compensation in lieu of one month's notice must be simultaneous with the order of termination or else the order of termination would be vitiated. We are unable to accept this submission.



The provision contained in the proviso to Rule 6 from the very language of the proviso entitles the delinquent a month's basic allowance plus dearness allowance for the period of notice. In this view of the matter even assuming that the said payment has not been made along with the order of termination, the order of termination will not get vitiated on that score."

7. The logic and the judgment, which has been referred to in relation to Section 25F of the Industrial Disputes Act, not having any application, the Court comes to a considered opinion that the dismissal of the writ application cannot be said to be erroneous in law or in fact.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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