

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7229 of 2014

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1. Ishwar Chandra Singh(Constable No. 375) S/o Late Baijnath Singh resident of
Village - Gavirar, P.S. Raghunathpur, District – Siwan Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of
Bihar, Patna

2. The Director General of Police, Bihar Patna

3. The Deputy Inspector General of Police, (Railway), Bihar, Patna

4. The Superintendents of Police (Railway), Patna

5. The Conducting Officer - cum - Rail Police Inspector, Mokama, Patna, Bihar
.... Respondents

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Appearance :

For the Petitioner : M/S Awadhesh Kumar Pandey & Rajeev
Lochan, Advs.

For the Respondents : Mr. Raj Kishore Roy, G.P. XVIII

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-09-2017

Prabhat Kumar Jha, J. Heard Shri Awadhesh Kumar Pandey, the learned counsel appearing for the petitioner, and Shri Raj Kishore Roy, learned GP XVIII.

The petitioner has filed this writ petition for setting aside the order, dated 01.11.2007, as contained in Memo No. 2365, by which the Superintendent of Police, Railway, Patna, dismissed the petitioner from his services. The petitioner, further, seeks to quash the order, dated 28.08.2008, contained in Memo No. 467, passed by the Deputy Inspector General of Police, Railway, Bihar, Patna, in appeal, and the order, dated 09.12.2013, contained in Memo No. 5600, passed by the Director General of Police, Bihar, Patna, on the memorials, filed by the petitioner, by which the appeal and memorial were dismissed.

While the petitioner was posted as a Constable in Government Railway Police, Patna, a departmental proceeding no. 23 of 2006 was initiated for his unauthorized leave from 01.06.2005 to 23.08.2005, 83 days and from 04.09.2005 to 12.09.2005, for 9 days. The petitioner, again, remained absent unauthorizedly for 30 days from 15.10.2005. The petitioner, again, remained absent from 08.12.2005 to



20.12.2005 and lastly the petitioner remained absent from 07.01.2006, but, did not report till the initiation of the proceeding. The enquiry officer, after completion of enquiry, submitted report holding the petitioner guilty for remaining unauthorizedly absent from duty on different dates. The Superintendent of Police, Railway, Patna, dismissed the service of the petitioner vide order, dated 01.11.2007, as contained in Memo No. 2365. The petitioner filed appeal before the Deputy Inspector General of Police, Patna, and after dismissal of appeal, petitioner preferred memorial before the Director General of Police, Patna, but, the same was also dismissed.

The learned counsel for the petitioner submits that altogether the petitioner remained absent for 128 days on account of illness of his wife and son. In the departmental proceeding no notice was given to the petitioner. The petitioner remained absent from 01.06.2005 to 23.08.2005, but, again, he joined. The petitioner on account of unavoidable reasons, due to illness of his wife and son, remained absent on different dates, but, the petitioner immediately, thereafter, joined. Neither the disciplinary authority nor the enquiry officer gave notice to the petitioner about the initiation of departmental proceeding.

It is, further, submitted that the petitioner again remained absent for few days and joined on 28.04.2006 and departmental proceeding 56 of 2006 was initiated. When the petitioner remained absent from his duty from 03.03.2007 to 10.03.2007, another departmental proceeding vide departmental proceeding no. 70 of 2007 was initiated, but, the petitioner was also not informed. The petitioner only received second show cause notice, as contained in Memo No. 1681, dated 23.07.2007, and the petitioner filed his show cause on 21.08.2007, but, neither the disciplinary authority nor the appellate authority nor the Director General of Police considered the show cause of the petitioner and dismissed the petitioner from service for absence of about 128 days.



The learned counsel for the petitioner, further, submits that the dismissal of the petitioner for unauthorizedly remaining absent for 128 days is disproportionate to the charges. There are many examples in the Police Department that a Constable remained absent unauthorizedly for more than years, but, his dismissal was set aside on the ground that the punishment is disproportionate to the charge and, therefore, the order of punishment is discriminatory.

On the contrary, Shri Ran Kishore Roy, learned GP XVIII, submitted that from the memo of charge, itself, it appears that petitioner remained absent unauthorizedly on several occasions and the order of dismissal is passed after considering the show cause of the petitioner. Since, the petitioner is habitual in remaining absent unauthorizedly, therefore, the order of dismissal is not disproportionate to the charge.

Admittedly, the petitioner, for the first time, remained absent, unauthorizedly, on 01.06.2005 and remained absent till 22.08.2005. The memo of charge, itself, shows that the petitioner joined his duty on 23.08.2005. Similarly, whenever the petitioner remained absent unauthorizedly, the petitioner joined, thereafter, his joining was accepted and petitioner was also transferred from one place to another, but, the disciplinary authority initiated departmental proceeding no. 23 of 2006. The learned counsel for the State has not been able to explain that when the petitioner was on duty why he was not noticed about initiation of the departmental proceeding no. 23 of 2006. Consequently, thereby the petitioner did not participate in the departmental proceeding. The memo of charge, itself, shows that for absence of the petitioner another departmental proceeding, bearing no. 56 of 2006, was initiated and he was put under suspension, but, it has nowhere been stated that the petitioner was informed about the initiation of departmental proceeding no. 23 of 2006 and departmental proceeding no. 56 of 2006 although the petitioner remained on duty during that period and the authority allowed him to join. Third departmental proceeding, bearing 70 of 2007, was also initiated, but, the petitioner was not informed. The departmental



proceeding no. 70 of 2007 was dropped since the petitioner was dismissed from service after conclusion of departmental proceeding no. 23 of 2006, but, from the facts, aforesaid, it appears that neither the disciplinary authority nor the enquiry officer made any sincere effort to serve the notice to the petitioner while he was on duty about the initiation of departmental proceeding. The order of disciplinary authority, as contained in Annexure 4, it appears that the disciplinary authority has not considered, at all, the show cause, filed by the petitioner, about the illness of his son and wife. Thus, the order of the disciplinary authority is passed without affording proper opportunity to the petitioner and on this score alone the order of disciplinary authority dismissing the petitioner is bad in law and not sustainable. Consequently, the order of the appellate authority, as well as the order passed in memorials, is also not sustainable on the ground that the appellate authority as well as the Director General of Police have not, at all, considered the grounds taken by the petitioner did not provide proper opportunity.

Thus, the writ petition is **allowed**. The order, dated 01.11.2007, contained in Memo No. 2365, and the order, dated 12.12.2013, contained in Memo No. 5600 are **set aside**. The matter is remitted back to the disciplinary authority to proceed afresh and pass order after hearing the petitioner, in accordance with law.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.09.2017
Transmission Date	

