

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5124 of 1999

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Mehboob Ali, son of Noor Mohammad, resident of village-Karsara, P.O. Madiapar,
Via-Atraulia, District Azamgarh Utter Pradesh.

.... Petitioner/s

Versus

1. The Commandant-Cum-Chief Judicial Magistrate, 82 BN (Batalian),
C.R.P.F. Panisagar (North Tripura).
2. The Deputy Inspector General of Police, C.R.P.F. Patna, Bihar
3. The Inspector General of Police, C.R.P.F. Patna, Bihar.
4. The Assistant Commandant 87 C.R.P.F. Panisagar.
5. Deputy Commandant 87 BNCRPF, Pani Sagar, North Tripura

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhu Narayan Sharma, Adv. Mr. Arvind Kumar, Adv.
For the Respondent/s	:	Mr. Anjani Kumar Sharan, ASG Mr. R.K.Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-09-2017

Heard Mr. Prabhu Narayan Sharma, learned counsel for the petitioner and Mr. Anjani Kumar Sharan, learned Assistant Solicitor General for the Union of India assisted by Mr. R.K. Sharma, learned counsel.

The writ petition was admitted for hearing on 29.11.2000.

The petitioner is aggrieved by the order dated 8.5.1998 of the Commandant, passed in exercise of power vested in him under Section 12(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as 'the Act') and the Rules framed thereunder whereby he has ordered for dismissal of the petitioner consequent upon his conviction and sentence in the judicial trial held for the offence punishable under Section 9(b) read with Section 9(j) of 'the



Act' inter alia for assault on his superiors and colleagues.

Although Mr. Sharma learned counsel for the petitioner has laboured hard to persuade this Court for remand as according to him the order is ex-parte and without opportunity of hearing to the petitioner but considering that the dismissal order is resting entirely on the judgment of the trial Court in the criminal case instituted against the petitioner for assault on his colleagues as well as superiors, the judgment of which has been placed on record vide Annexure-R/1 to the supplementary counter affidavit, the plea taken by Mr. Sharma is only taken to be rejected because paragraph 3 of the judgment would confirm that while charges were being established that the petitioner deserted the lines of 87 BN C.R.P.F. on 27.4.1998 at 6.40 P.M. never to return thereafter. In such circumstances, the petitioner cannot take a plea of denial of opportunity.

The argument of Mr. Sharma that the trial should have been split up in such circumstances, again does not merit consideration where the petitioner has himself abandoned the trial in the midst. This plea is thus again only taken to be rejected.

In my opinion, if the petitioner himself has abandoned the criminal trial which is the foundation for the dismissal order, he can neither be permitted to take a plea of denial of reasonable opportunity nor can he complain that the trial was held behind his back. The judgment in the criminal case would also confirm that the witnesses



led by the prosecution would confirm the allegation of assault leveled against the petitioner on his fellow colleagues as well as his superiors resulting in the judgment of conviction and punishment of imprisonment for one month. Thus even on merits and in the circumstances where the petitioner himself who has chosen to abandon the criminal trial waiving his right to cross examine the witnesses, he cannot be permitted to raise questions on infirmity whatsoever, present therein.

In so far as the order of dismissal is concerned, since it is passed in exercise of power vested in the appointing authority under Section 12 of ‘the Act’ which inter alia enables him to dismiss every such person who has been convicted and sentenced to imprisonment, the order put to challenge in the writ petition is only a consequence of the judgment of conviction placed on record vide Annexure-R/1 to the supplementary counter affidavit.

In the circumstances discussed neither any infirmity can be found in the procedure followed by the respondents nor the petitioner by his conduct has made out a case of indulgence. The writ petition is dismissed but without any order as to costs.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
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