

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.327 of 2010
IN
Civil Writ Jurisdiction Case No. 8343 of 2009**

- =====
1. The Union of India through the Secretary Deptt. Of Home, Govt. Of India, New Delhi
 2. The Inspector General of Police C.R.P.F. Bihar Cadre, Patna
 3. The Additional Inspector General of Police Group Centre, C.R.P.F. Muzaffarpur
 4. The Additional Deputy Inspector General Of Police Group Centre, C.R.P.F. Muzaffarpur

.... Appellant/s

Versus

Gagan Prasad S/O Sri Adalat Singh R/O Vill.- Sukshrauli, P.O.- Barauli, Distt.- Bhojpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.D.Sanjay, Addl. S.G.
For the Respondent/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Manish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 05-09-2017

The Union of India through the Secretary,
Department of Home, Government of India, New Delhi and the
Inspector General of Police, CRPF, Bihar Cadre and others have
preferred the present Letters Patent Appeal against the judgment
and order dated 9.9.2009 passed by the Writ Court in CWJC No.
8343 of 2009, whereby the Writ Court directed the respondent-
appellants herein to accept the joining of the petitioner-respondent



herein holding that the petitioner-respondent would be deemed to be in regular service as a General Duty Constable pursuant to the selection process of 2002.

The factual matrix of the case in brief, lies in narrow compass. The writ petitioner respondent herein applied for recruitment as Constable General Duty in CRPF pursuant to advertisement dated 13.08.2002 and on passing through the selection process, interview and medical test, he was issued with an appointment letter and he reported the Group Centre, Muzaffarpur on 16.07.2003. Subsequently, the writ petitioner-respondent fell sick and was treated at CRPF Hospital, Muzaffarpur on 3.9.2003 and at S.K. Memorial Hospital, Muzaffarpur on 8.9.2003. On 14.9.2003 he left for his home and again reported on 20.10.2003. The writ petitioner thereafter left the Group Centre campus without any information and did not report back for duty.

In the meanwhile, in connection with large scale of complaints, it appears that Central Bureau of Investigation raided the Group Centre, Muzaffarpur on 26.9.2003 and all the dossiers and connected documents of the candidates including the writ petitioner-respondent were seized for investigation. Thereafter on 28.3.2004 following the CBI raid and pending investigation into



the illegality in the selection process, all candidates under cloud were sent back to their home with instruction that they will be intimated about the outcome of the investigation. Subsequently, the CBI returned the dossiers and those candidates who were sent back on 28.2.2004, were intimated about the outcome of the investigation, called back from their homes and they were taken back in their services.

It appears that several writ applications were filed by 25 such candidates against whom there was adverse report and in their cases indulgences were granted by the Writ Court. The instant writ application was filed by the writ petitioner in July, 2009 for issuance of a writ directing and commanding the respondents-appellants to accept the joining of the writ petitioner on the post of Constable, General Duty in CRPF on the ground that similarly situated persons were asked to join the said post in 2009. On behalf of the respondents-appellants herein a counter affidavit was filed opposing the writ application wherein the respondents-appellants took the following stands in paragraphs 8,9,10 and 11.

“8. That having found place in the merit list of waiting list petitioner was issued offer of appointment to make up the short fall of vacancies. Accordingly, the petitioner reported in this GC on 16.7.2003. the petitioner fell sick and



he treated at GC, CRPF, Hospital, Muzaffarpur on 3.9.2003 and SKMCH, Muzaffarpur on 8.9.2003. The petitioner deserted from camp on 7.11.2003 and after that he did not report back in this GC so far. In the mean time a large number of complaints were received against above recruitment. In view of said complaints CBI Patna raided this GC on 26.9.2003 and all the dossiers and connected documents/ filed etc. of candidates including the dossiers of the petitioners were seized by them for investigation. Keeping in view of uncertainty of time to be taken in finalization of investigation being carried out by the CBI authority all other candidates were returned to his home vide this office letter No. R.II-3/04-EC-V(K/W) dated 28.3.2004 with intimation that their selection/appointment as Constable General Duty in CRPF will be decided on the basis of investigation report of CBU Patna. Later on CBI authorities returned the petitioner's dossier to this GC for further course of action. Since, the petitioner had not reported back in this GC after 7.11.2003, he was not directed to report at GC, CRPF, Muzaffarpur. Photo copies of offer of appointment dated 4.7.2003, joining report and recruitment rolls are annexed herewith and marked as Annexure-C series.

9. That the petitioner had submitted an



application dated nil for appointment to the post of Constable General Duty and drawal of back wages. His application was forwarded to the Deputy Inspector General of Police, CRPF, Range, Muzaffarpur vide this office letter No. R.II-1/2006-EC-5 dated 25.11.2006 and the Deputy Inspector General of Police, CRPF, Range Muzaffarpur forwarded his application to the Inspector General of Police, Bihar Sector, CRPF, Patna (Bihar) vide his letter No. J-II-MRZ/06-EC-III dated 12.12.2006. Photo copies of the application of the petitioner, letter No. R.II-1/2006-EC-5 dated 25.11.2006 and letter No. J-II-MRZ/06-EC-III dated 12.12.2006 are annexed herewith and marked as Annexure-D series.

10. That now, petitioner has filed instant writ petition before Hon'ble High Court of Patna. Separate petitions/appeals on the subject matter were also filed in the High Court of Patna vide C.W.J.C. No. 14711 of 2004 filed by Pradeep Kumar Mishra (disposed off on 9.3.2006), C.W.J.C. No. 927 of 2005 filed by Awadhesh Kumar (disposed off on 9.3.2006), C.W.J.C. No. 2312 of 2006 filed by Sanjay Kumar (disposed off on 13.9.2006), C.W.J.C. No. 6070 of 2009 filed by Phulendra Kumar Singh (disposed off on 14.5.2009) etc.

11. That with regard to the averment made in



paragraph no. 1 of the writ petition it is submitted that the entreaty of petitioner is not acceptable. Having found place in the merit list of waiting list petitioner was issued offer of appointment made up the short fall of vacancies. Accordingly, the petitioner reported in this GC on 16.7.2003. The petitioner became ill and he was treated at GC, FRPF, Hospital, Muzaffarpur on 3.9.2003 and SKMCH, Muzaffarpur on 8.9.2003. The petitioner as mentioned in his writ, his father came to Group Centre, Muzaffarpur and took him to home on 14.9.2003 and he reported in this GC on 20.10.2003. The petitioner was deserted from camp on 7.11.2003 and after that he has not reported back in this GC so far. Hence he cannot be considered fit for appointment.”

The respondents-appellants herein have treated the writ petitioner-respondent as deserter as without any intimation and permission of the competent authority he deserted the center on 7.11.2003 and has not reported back in the GC.

The Writ Court on consideration of the materials available on the record and considering the submission of the parties rejected the case of the respondents-appellants that the writ petitioner has deserted his service and noticing the fact that CBI raid was made on 26.9.2003 and on 28.3.2004 a decision was taken



to send all the affected candidates to their home during investigation and as such the Writ Court rejected the submission of the respondents-appellants herein that his case cannot be treated similar to the other constables who were sent home on 28.3.2004 and were taken back in service after completion of the investigation, as the writ petitioner-respondent deserted on 7.11.2003 at his own volition and has not reported back. The Writ Court noted that in view of the CBI raid on 26.9.2003 and subsequent decision to send back the other candidates to their home but in the case of the writ petitioner like other similarly circumstanced candidates, he was not called back from his home the writ petitioner was not intimated about the outcome of the investigation and he cannot be made to suffer for the lapse of respondents and on the aforesaid ground the Writ Court held out that the writ petitioner would be deemed to be on duty when he has reported to the Group Centre on 16.7.2003 and he would be deemed to be in regular service as a General Duty Constable. The order of the Writ Court dated 9.9.2009 has been challenged in the instant Letters Patent Appeal.

By order dated 18.2.2010 passed on I.A. No. 1635 of 2010 in this appeal the operation of the order dated 9.9.2009 of the Writ Court was stayed and the same was made absolute vide order



dated 5.1.2012 and the instant Letters Patent Appeal was admitted for hearing.

Mr. S.D.Sanjay, learned Additional solicitor General appearing on behalf of the appellants submitted that the Writ Court committed error in allowing the writ application as the Writ Court has not appreciated the totality of the fact situation. In fact, on the date of CBI raid on 26.9.2003 no candidate was sent back to his home. The decision was taken only at the subsequent stage on 28.3.2004 whereas the writ petitioner without intimation to the competent authority deserted the Group Centre on 7.11.2003 and thereafter he did not report back for duty. He submitted that the CRPF was obliged only to intimate those candidates who were sent home pursuant to decision dated 28.3.2004 and not to a person who, at his own volition, left the Campus before 28.3.2004 without any information.

Mr. Sanjay submitted that in the matter of Para-Military Force like CRPF when the writ petitioner on his own, decided to leave the campus without any information and deserted the service for nearly six years, he is not entitled to any consideration for restoration of his service and reinstatement. The Writ Court has failed to draw distinction between voluntary desertion of service and the others who were sent back to their



home pursuant to decision dated 28.3.2003 and subsequent pending investigation by CBI.

Mr. Tej Bahadur Singh, learned Senior counsel appearing for the writ petitioner-respondent submitted that the Writ Court has rightly interfered in the matter as similarly circumstances others sent to home following the CBI raid on 16.7.2003, were taken back in service and as such the writ petitioner cannot be differentiated in the matter of acceptance of joining. He explained with reference to the totality of the fact situation that since he was not intimated like others to report back on duty, he cannot be branded as deserter. The writ petitioner was selected through a proper process of selection and if others were allowed to join, the Writ Court has committed no illegality in allowing the writ application and holding that the writ petitioner cannot be made to suffer because of the fault on the part of the respondents-appellants and declaring that the writ petitioner-respondent would be deemed to be in regular service as a General Duty Constable.

Having heard the parties and on appreciating the rival contentions and noticing the peculiar facts that CBI raid was made on 26.9.2003 and thereafter the writ petitioner reported for duty after his ailment on 20.10.2003 i.e. after the CBI raid, there was



absolutely no direction to the writ petitioner to return back to home like others whose selection was subject matter of investigation by CBI. In fact, that decision to send back to their homes the candidates against whom investigation was going on, was taken only on 28.3.2004 but much before that date the writ petitioner left the GC Campus on 7.11.2003 and as such he cannot claim parity with the other candidates who were directed to return back to home pursuant to decision dated 28.3.2004. Further, we find that on 7.11.2003 when the writ petitioner-respondent left the GC Campus he has not informed the competent authority. This is a further serious lapse on the part of the writ petitioner which not only distinguishes his case from the case of others but indicate that the temperament of the writ petitioner is not appropriate for disciplined service like CRPF.

We are of the considered view that the writ petitioner-respondent who left the GC Campus without information on 7.11.2003, cannot claim similar treatment like the candidate who were sent back to their home pursuant to the decision dated 28.3.2004 that they will be intimated about the outcome of the CBI investigation. As the writ petitioner was not sent home pursuant to the decision dated 28.3.2004, rather he himself voluntarily left the campus much before 28.3.2004, on 7.11.2003. We are of the



considered view that the writ petitioner does not deserve any indulgence into the matter as he approached the Writ Court after six years of the act of his voluntarily desertion on 7.11.2003. Moreover we are in 2017 and at this stage we cannot permit joining of the writ petitioner considering his past credentials.

Thus, in the facts and circumstances discussed above, we find substance in the submission of learned Additional Solicitor General appearing on behalf of the appellants. Accordingly, we allow this Letters Patent Appeal and set aside the judgment and order passed by the learned Writ Court in CWJC No. 8343 of 2009 dated 9.9.2009.

(Rajendra Menon, CJ)

S.Pandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2017
Transmission Date	

