

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12262 of 2010

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Ramji Singh , son of Late Ram Narayan Singh , resident of village - Panchshil
Nagar, P.O. + P.S.- Harnaut, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Govt. Of Bihar, Patna
2. The D.G.-Cum-I.G. Of Police, Bihar, Patna
3. The D.I.G. Of Police, Magadh Range, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad

For the Respondent/s : Sri Harish Kumar , GP No. 8

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-05-2017

1. Heard Sri Ram Hriday Prasad, learned counsel for the
petitioner and Sri Harish Kumar , learned GP No. 8

2. The petitioner, who was Assistant Sub Inspector of
Police and dismissed from service, has approached this Court
invoking its writ jurisdiction under Article 226 of the Constitution of
India, with a prayer to quash an order dated 14.2.2002 (Annexure '7'
to the writ petition), passed by the Deputy Inspector General of
Police, Magadh Range. By the said order after full fledged
departmental enquiry and receipt of the enquiry report suggesting
prove of charges, has passed order of dismissal of the petitioner from
service. The petitioner has further prayed for quashing of an order
dated 26.8.2008 passed by Director General of Police , Bihar



(Annexure '9' to the writ petition) whereby, memorial preferred by the petitioner against order of dismissal was rejected. By way of referring to Annexure '7' to the writ petition i.e. order of the disciplinary authority, Sri Ram Hriday Prasad, learned counsel for the petitioner submits that despite the fact that after issuance of 2nd show cause notice, the petitioner had raised number of objections to show that principle of natural justice was not followed in the departmental proceeding, the disciplinary authority without considering those grounds has simply passed order of dismissal of the petitioner from service. In sum and substance, it has been argued that order of disciplinary authority is liable to be set aside on the ground of violation of principle of natural justice and similarly, he submits that order passed by Director General on its memorial is also required to be interfered with .

3. Sri Harish Kumar, learned Government Pleader No. 8 by way of referring to certain facts in the counter affidavit as well as the order of the of the disciplinary authority has argued that in the departmental proceeding full opportunity was provided to the petitioner. Despite the fact that notice was received by the petitioner personally, he never chose to participate in the departmental proceeding, and as such, in the departmental proceeding witnesses were examined and at least two witnesses who were examined on



behalf of the Department had proved the charge against the petitioner. He submits that charge against the petitioner was very serious since petitioner remained absconding for 630 days. According to him the petitioner was served with memo of charge i.e. Annexure '2' to the writ petition. In the charge memo it was categorically stated that petitioner for the first time on 24.1.1994 while he was posted in Daudnagar Police Station, had left for Court work to Aurangabad and thereafter, he remained absconder for about 630 days and thereafter, on 16.10.1995 he appeared in the Police Centre, Aurangabad. In the departmental proceeding charge memo was received by the petitioner personally. Even he was asked to file his show cause but petitioner did not reply. By way of referring to the statement made in paragraph '9' and '10' of the counter affidavit he submits that full opportunity was provided to the petitioner but it was petitioner himself who avoided to participate in the departmental proceeding. He has referred paragraph '9' and '10' of the counter affidavit, which are quoted hereinbelow:-

“9. That in reply to the statements made in paragraph No. 6 & 7 of the writ petition it is stated that they are wrong and incorrect. Actually petitioner was appeared on 03.03.1997 in the departmental proceeding after receiving the letter No. 2415 / R.O. dated 27.10.1995 on 27.11.1995 and letter No. 3063 / R.O. dated 27.11.1995 on 22.03.1996. After the day of 1st appearance on 03.03.1997 in the departmental



proceeding and the end of the departmental proceeding sufficient time has been granted to the petitioner but neither he appeared nor he filed any documentary evidence or to come forward to cross examine the witness. Hence allegations made by the petitioner in those paras towards the respondents are denied, Annexure – 7 of this writ petition is relevant for the kind consideration by this Hon'ble Court.

10. That in reply to the statements made in paragraph No. 8 of the writ petition it is stated that here that actually letter No. 2415/R.O. petitioner's native place of resident through A.S.I. Siyaram Singh which has been received by the petitioner personally on 15.10.1995 and further petitioner has also received the charge of the departmental proceeding on 27.11.1995 and 22.03.1996. So allegations to this contrary is denied by the respondents."

4. On the aforesaid grounds he submits that there is no error in the departmental proceeding nor it is a case of violation of principle of natural justice. He submits that being Assistant Sub Inspector of Police unauthorized absence was serious misconduct on his part, which warrants dismissal from the service. On the point that for Armed Forces Personnel un-authorized absence is treated as serious misconduct, he has placed reliance on a judgment of the Apex Court reported in (1996) 1 SCC 302 [STATE OF U.P. AND OTHERS *Versus* ASHOK KUMAR SINGH AND ANOTHER]. He has placed reliance on paragraph no. 8 of the judgment, which is quoted hereinbelow:-



“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court’s observation that “his absence from duty would not amount to such a grave charge”. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that “the punishment does not commensurate with the gravity of the charge” especially when the High Court concurred with the findings of the Tribunal on facts . No case for interference with the punishment is made out.”

5. Besides this, relying on a judgment of the Apex Court reported in **AIR 1962 SC 1344 (Major U.R. Bhatt v. Union of India)** he submits that in a departmental proceeding if the delinquent prefers not to participate, the disciplinary authority is not restrained from proceeding against the delinquent, and in such cases disciplinary authority is well competent to pass order. On the aforesaid grounds he submits that the petition is required to be dismissed, since there is no merit in the present petition.



6. Besides hearing learned counsel for the parties, I have perused the materials available on record. On going through the order of the disciplinary authority, the Court is of the opinion that no error has been committed by the disciplinary authority. Moreover, at the time of exercising power of judicial review, this Court is not at all required to go into merit of the case. Only point is required to be examined at the time of judicial review is as to whether in decision taking process any illegality was committed or not. Since in the order of the disciplinary authority as well as in the counter affidavit a specific stand has been taken that full opportunity was provided to the petitioner and petitioner himself had chosen not to file any proper reply, the Court is of the opinion that this may not be termed as a case of taking decision violating any procedure. Considering the judgment of the Hon'ble Apex Court in Ashok Kumar Singh Case (Supra), the Court is of the opinion that since the petitioner remained absconding for about 630 days, the disciplinary authority has rightly passed order of dismissal of the petitioner. In such case there was no reason to take any lenient view, otherwise it would have hampered the discipline of the Armed Forces. The writ petition stands dismissed. In this case as per earlier order of this Court the State Counsel had produced the record of the departmental proceeding and I have examined the entire record and after going



through the same the Court has found no error in the departmental proceeding or in order of disciplinary authority against the petitioner.

7. The record is hereby returned to Sri Harish Kumar ,
learned GP No. 8.

8. The writ petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19 -05-2017
Transmission Date	NA

