

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14497 of 2013

=====

Bir Bahadur Singh, son of Sri Ram Badan Singh, resident of Village - P.O. Daulatpur Gandhinagar, P.S. Gaurichak, District -Patna

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. Of Bihar, Patna
2. Director General of Police, Bihar, Patna
3. The D.I.G. of Police, Purnea Range, Purnea
4. S.P., Katihar
5. Seargent Major, Police Line, Katihar

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Ram Hriday Prasad
Ms. Maruti Kumari, Advocates.

For the Respondents : Mr. Bijoy Kumar Sinha, AC to AAG-V

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 11-09-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed against the order of dismissal in Katihar District Order No. 2630 of 2002 dated 21.11.2002 passed by S.P. Katihar conveyed by Sergeant Major, Police Line, Katihar on 14.08.2012 (Annexure-3); order of D.I.G. of Police, Purnea Range, Purnea dated 15.10.2012 (Annexure-4) by which appeal of the petitioner has been rejected; order of Director General of Police, Bihar, Patna dated 15.05.2013 (Annexure-6) by which the memorial of the petitioner has been rejected; and for grant of all consequential benefits.



3. Learned counsel for the petitioner raises a short point to assail the impugned orders, submitting that the order of dismissal has been passed after noticing the past performance of the petitioner and on finding that the petitioner had absconded seven times in the past, had overstayed his leave on twelve occasions and had been given two major punishments. It is submitted that Rule 826 of the Bihar Police Manual, 1978 contemplates that if the previous record of service is not included in the charge of the proceeding, the same shall not be taken into account for determining the quantum of punishment. It is therefore submitted that regard being had to the past services of the petitioner, he has been visited with unduly harsh punishment and has suffered prejudice on account of consideration of his past service though the same ought not to have been taken note of in view of Rule 826 of the Bihar Police Manual, 1978.

4. Learned counsel for the respondents on the other hand opposes the writ petition, submitting that the past service record of the petitioner has not been made the basis of the punishment meted out to him but has merely been referred to in passing. As a matter of fact, the punishment has been awarded in view of the conduct of the petitioner who had gone absconding since 24.04.2001 and had not reported for duty even until passing of the impugned order of dismissal on 14.08.2012 except intermittently appearing for a few days in between. It is further pointed out that the



petitioner suffers from various diseases and illnesses such as epileptic fits and spinal attack with history of unconsciousness as evident from the medical certificate dated 25.07.2012 (Annexure-2) and is not fit for police service even physically.

5. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. The impugned order of dismissal has been passed on a finding that the petitioner had been absent from duty for more than a decade since 24.04.2001 except one or two occasions for a few days. The petitioner did not cooperate in the disciplinary proceedings despite issuance of show cause notice, he did not produce any evidence nor reported for duty. He did not submit any show cause reply nor appeared in order to cross-examine the witnesses despite repeated notices. The documents were received by the petitioner's brother Kishori Prasad Singh and whereabouts of the petitioner were not known. The punishing authority has no doubt referred to the past behaviour of the petitioner but however the same has not been made the basis of punishment. The conduct of the petitioner in remaining absconding for more than a decade has been the primary reason for having dismissed him from service on grounds of gross indiscipline as such misconduct tarnished the image of the Police Department.

6. The writ petition accordingly stands dismissed.

Md. Ibrarul/BT

(Vikash Jain, J)



AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.09.2017
Transmission Date	N.A.

