

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3425 of 2002**

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BHARAT RAM S/O KRISHNA RAM R/O VILLAGE JAMUAOUN P.S.  
PIRO DISTRICT BHOJPUR.

... .. Petitioner/s

Versus

1.THE STATE OF BIHAR.  
2.INSPECTOR GENERAL OF POLICE, SPECIAL BRANCH, BIHAR,  
PATNA.  
3.DEPUTY INSPECTOR OF POLICE, SPECIAL BRANCH, PATNA.  
4.SUPERINTENDENT OF POLICE (G) SPECIAL BRANCH, BIHAR,  
PATNA.

... .. Respondent/s

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**

**Date : 27-03-2018**

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for issuance of a writ of certiorari for quashing the order dated 21.02.1991 passed by Superintendent of Police (G), Special Branch, Bihar, Patna (respondent no. 4) as contained in Annexure-5 by which the petitioner was dismissed from the post of Constable, Special Branch, Bihar, Patna.

3. Briefly stated, the case of the petitioner is that he was appointed on the post of Constable in Special Branch, Patna. In the year 1985, petitioner was suffering from various diseases such as Jaundice and Mental Illness and was under treatment for long period and he remained absent from 03.05.1985 to 29.05.1985 and again from 30.05.1985 onwards and a



chargesheet was served upon the petitioner on 28.04.1986. The petitioner was suspended on 06.06.1985 by the disciplinary authority respondent no. 4 and he remained suspended till 30.10.1989. A departmental proceeding was initiated against the petitioner vide Case No. 8 of 1987 and S.N. Dubey, Dy. S.P., Special Branch, was appointed as enquiry officer who after enquiry submitted his report on 09.07.1991. The enquiry was ordered to be conducted under Rule 843 of Police Manual.

4. The enquiry report was considered by the disciplinary authority and he was dismissed from service. The petitioner remained absent continuously for about five and a half years without any information or intimation to the department or without obtaining permission of leave from the department. The petitioner joined his service on 10.09.1989 and his suspension was revoked on 30.10.1989 and after he was found guilty of charges of continued and unauthorized absence, was dismissed from service. It has further been submitted that against the order of dismissal passed by the punishing authority he filed appeal before the appellate authority but the same was never decided and remained pending.

5. A Counter affidavit has been filed on behalf of respondents in which it has been stated that the petitioner was



appointed on the post of constable in 1984 and he absented from his duty from 03.05.1985 without any intimation or prior permission. He returned back in the office on 29.05.1985 but again absconded w.e.f. 30.05.1985 without any intimation or information. He was placed under suspension w.e.f. 06.06.1985 for unauthorized absence and petitioner appeared on 29.10.1985 with an application enclosing a copy of medical certificate procured from local state dispensary that he was under treatment from 03.05.1985 to 27.10.1985 and thereafter again absconded from duty. A proceeding no. 8 of 1987 was initiated against the petitioner for unauthorized absence from duty. Copy of which was delivered to the petitioner at his home address. Sufficient opportunity was granted to the petitioner by the enquiry officer to submit his written defence and notices were served at this home address but the petitioner did not respond. He was given opportunity by the enquiry officer at every stage of proceeding to cross-examine the witnesses and to produce his defence witness but he never appeared. The enquiry officer after conducting the inquiry submitted his inquiry report to the disciplinary authority and a copy of the said report was duly served to the petitioner at his home address to submit his reply on the findings of the enquiry officer within two weeks vide



memo dated 16.11.1990.

6. The petitioner was released from suspension w.e.f. 30.10.1989 and petitioner reported his arrival at the headquarters on 30.10.1989 but he again reported sick on 06.03.1990, and his pay was withheld w.e.f. 25.05.1990 and he was again asked to resume his duties by sending letter to him at his home address but he did not reply.

7. The disciplinary authority on the basis of enquiry report and materials available on record dismissed petitioner from service by order dated 30.01.1991. Appeal filed by the petitioner was duly considered by the appellate authority i.e. Deputy Inspector General of Police and the appeal was dismissed by the appellate authority and the same was communicated to the petitioner at his home address. The petitioner thereafter submitted memorial to the D.G.P and I.G. Bihar Police, Patna on 25.10.2000. The memorial was referred to Inspector General of Police, Special Branch and the memorial was rejected by order dated 11.03.2002. A copy of the same was communicated to the petitioner at his home address. The petitioner was served memo of charge issued on 28.04.1986 for his unauthorized absence from 03.05.1985 to 29.05.1985 and he was granted opportunity to submit his reply by 30.09.1986. The



petitioner was also charged that he remained unauthorized absent from 03.05.1985 to 29.05.1985 and came to his duty on 30.05.1985 and thereafter again absconded which amounts to indiscipline and lack of devotion to duty and incompetency. The petitioner was deputed at the residence of Superintendent of Police, but the Superintendent of Police informed that the petitioner has left his residence without any information or leave and on the basis of records maintained in the office it was found that petitioner remained absent from duty from 03.05.1985 to 29.05.1985 without any permission or sanction of leave and reported on 30.05.1985 and thereafter again absconded and he was put under suspension on 06.06.1985. Petitioner became mentally unstable on account of his suspension order and was treated for his mental imbalance and after recovery, he reported on duty on 28.10.1985. The petitioner remained absent from Head Office for nearly five and a half years. On the basis of enquiry report the disciplinary authority dismissed the petitioner from service. The petitioner was proceeded for his absence from 03.05.1985 to 30.05.1985 but his subsequent conduct of remaining unauthorized absence from 30.05.1985 to 25.09.1989 and thereafter from 06.02.1990 till passing of the order has been taken into account by the disciplinary authority



which is not permissible. The petitioner was proceeded for unauthorized absence for the period from 03.05.1985 to 30.05.1985, which was the charge framed against the petitioner in memo of charge, as such the disciplinary authority cannot take into account any other misconduct committed by the petitioner when the same did not form part of the chargesheet.

8. The petitioner thereafter filed appeal before the appellate authority i.e. DIG, Special Branch, Patna, in which he has alleged that enquiry officer conducted the enquiry *ex parte* without any information or granting him opportunity to place his case which was dismissed by the appellate authority and his memorial preferred before the revisional authority has also been dismissed. It is an admitted fact that petitioner was appointed in 1984 and he absented from 03.05.1985 without any intimation or prior permission and reported back in the office on 29.05.1985 but again absconded w.e.f. 30.05.1985 without any intimation or permission and thereafter he was put under suspension and he appeared on 28.10.1985, with an application enclosing medical certificate for his treatment from 03.05.1985 to 27.10.1985 and again absconded. All efforts were made by the authorities to persuade him to join his duty but the same remained futile and thereafter a proceeding was initiated against



him in 1987, and he was dismissed by the disciplinary authority which was affirmed by the appellate authority as well as revisional authority. The petitioner was a member of disciplined force and such type of indisciplined Act is not expected from a member of police force and he remained absent for more than five and a half years on the ground that he was unwell and suffering from mental disease and in such circumstances, this Court is not inclined to grant any relief to the petitioner and accordingly the present writ petition stands dismissed.

**(S. Kumar, J)**

ranjan/-

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