

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4926 of 2016

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1. Ricku Kumar Chhetry @ Constable 672 Ricku Kumar Chhetry Son of Sri Chitra Bahadur Chhetri resident of village - Bihar Military Police - 7, P.S. Katihar, District - Katihar

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna
3. The Deputy Inspector General, Military Police (Central Zone), Bihar, Patna
4. The Commandant, Bihar Military Police, 1st Gorkha B.T.N. Patna
5. The Superintendent of Police, Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Adv. Mr. Prashant Kashyap, Adv.
For the Respondent/s	:	Mr. Birju Prasad, G.P.13 Mr. Krishna Murari, A.C. to G.P.13 Mr. Amresh, A.C. to G.P.13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-05-2018

Heard Mr. Niranjana Prasad, learned counsel for the petitioner and Mr. Birju Prasad, G.P.13 for the State.

The petitioner is aggrieved by the order bearing Memo No.1403 dated 26.12.2014 of the respondent No.4, the Commandant, Bihar Military Police, Ist, Gorkha Batallian, Patna whereby the petitioner has been dismissed from service inter alia on grounds for alleged overstaying on leave from 17.5.2014 to 25.12.2014 (223) days. A copy of the order of dismissal is impugned at Annexure-7 to the writ petition and has been confirmed by the appellate authority i.e the



Deputy Inspector General, Military Police, Patna who vide order dated 10.8.2015 has been pleased to reject the appeal of the petitioner thus confirming the dismissal order impugned at Annexure-8 and even the memorial of the petitioner has been rejected by the Director General of Police vide order at Annexure-11 which is incomplete.

Undisputed, fact of the case is that the petitioner after taking leave from 16.05.2014 to 19.5.2014 through his representation at Annexure-2 never joined his duty thereafter and which has led to the proceedings in question culminating in the order of dismissal as affirmed by the appellate authority and the DGP. The plea taken by the petitioner is, that he was suffering sciatic syndrome and thus on bed rest, for which relies on the certificate of the doctor at Annexure-3 series. It is his case that after he recovered from the said ailment, he again fell ill on account of viral hepatitis which continued from 12.12.2014 to 13.12.2014 and it is on such account that the petitioner could not join duty.

Mr. Niranjana Prasad learned counsel for the petitioner has very passionately tried to submit that the situation was beyond the control of the petitioner in not joining office but the fact remains that even though the petitioner was declared fit on 31.12.2014 and the proceedings in question had yet to reach its conclusion yet he never bothered to join the force and the reasons have not been explained.



Unauthorized absence by members of the force has been taken as a very serious misconduct and reference in this regard is made to the judgment of the Supreme Court reported in **(2005) 13 SCC 228 para 9 (Union of India Versus Ghulam Mohd. Bhat)** and para 6 of the judgment reported in the same volume at page 709 in the case of **Union of India and Others versus Datta Linga Toshawad**. The Supreme Court while deprecating the habit of member of the force in remaining on unauthorized leave on account of overstaying, has supported extreme action for such misconduct.

May be the petitioner was suffering from sciatic syndrome as reflecting from the prescription at Annexure 3 series which is dated 18.5.2014 but then he was simply advised 4 weeks rest by the Doctor and nothing beyond. In fact, the petitioner was directed to report after six weeks but thereafter neither the medical advice nor the prescriptions, have been placed on record except a certificate dated 11.12.2014 which simply informs that the petitioner was under treatment until the said date. There is no explanation either in the pleading or in the enclosures as to the intervening period, beginning from treatment on 18.5.2014 until the issuance of the certificate on 11.12.2014.

The other serious lapse by the petitioner is, that even though he sought leave for 4 days from 16.5.2014 to 19.5.2014 but thereafter



there is nothing on the record of the proceedings to demonstrate that the petitioner discharged his responsibility to inform his employer the reasons for non joining or for extension of his leave. A uniform service requires a discipline of the highest degree in comparison to a civilian duty but the conduct of the petitioner fails him on his obligation to report.

The enquiry report at Annexure A to the counter affidavit gives an even more dismal picture where the notice sent to the petitioner at his home address, was refused by him. The petitioner thus, despite having knowledge about the proceeding, neither bothered to register his appearance nor did bother to report back for duty even though he was certified fitness by the Doctor. Though Mr. Niranjana Prasad has sought to question the proceeding on procedural lapse and may be he has justifiable reasons to raise such issue but in my opinion the complete absence of any defence by the petitioner as to his continued absence of 223 days, coupled with the fact that the notice issued in the disciplinary proceeding returned with his refusal, and he never bothered either to inform his illness or seek extension, the proceeding can neither be interfered for being held ex parte nor the conduct of the petitioner left any option for the disciplinary authority to impose any other penalty.

It is informed by Mr. Birju Prasad that even the second show



cause notice was received by the petitioner personally as mentioned in the counter affidavit but was ignored. Such is also the position reflecting from the termination order.

For the reasons discussed, I am not persuaded to interfere with the orders impugned.

The writ petition is dismissed.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2018
Transmission Date	NA

