

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14309 of 2010

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Jawahar Prasad Singh S/O Late Motilal Singh R/O Mohalla- M.I.G., Sector-3,
Block-II, Quarter No.17, Bahadurpur Housing Colony, Bhut Nath Road, P.S. -
Agam Kuan, Kankarbagh, Patna-20

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Patna, Bihar
3. The Deputy Inspector General of Police, Central Zone, Patna
4. The Senior Superintendent of Police, Patna, Bihar
5. The Proceeding Officer cum Police Inspector -cum- Officer-In-Charge
Gardanibagh Police Station, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. Vijay Bharti, AC to SC7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 11-04-2018

No one appears for the petitioner. Counsel for the State is present. The case was taken up yesterday when learned counsel for the petitioner was absent but, the counsel for the State was present. Having no way out, this writ petition is being disposed of on the strength of the submission made by the State and the material available on record.

The petitioner was a Constable in the Patna District Police Force and was deputed in the Police Control Room, Patna vide order no. 3400/05, he was transferred to Gopalganj district and was relieved on 1.6.2005. The Dy.S.P., P.C.R., Patna directed the petitioner to report at New Police Line, Patna for taking command to join at the transferred post but, the petitioner did not



obey the order of his senior officer and not reported at the New Police Line, Patna till 5.9.2005 and remained absconding. For the charge of non-compliance of the order to join at the transferred place of posting and absconding from the duty, he was put under suspension vide order no. 5666/05, suspension order later on withdrawn but, the petitioner was put under departmental proceeding and the charges were framed, he was served with the charge-sheet dated 5.10.2005 on 17.6.2006. The allegation has been made that in pursuance of the transfer of the petitioner from Patna to Gopalganj, he was relieved and L.P.C. was given but, he did not proceed to join at the new place of posting. Further charge has been made that vide Memo No. 1272 dated 31.8.2005 he was relieved with a direction to join at the new police line but, he did not join the new police line on 5.9.2005 and remained absconding and on account of absence from duty, he was put under suspension. The petitioner filed explanation in which he has specifically taken a plea that during that period, he was under treatment on account of suffering from illness of T.B. at P.M.C.H., Patna. The enquiry officer submitted the enquiry report and found the charges proved against him. From the report, it appears that he has taken a plea that as he was suffering from illness and was treated at Patna Medical College and Hospital and submitted the



photocopy of the certificate. The defence of the petitioner was that he was suffering from illness which was not rejected or denied but, has arrived to a finding that before going for treatment, he should have informed about his ailment. It is a factual aspect that the plea of his treatment at P.M.C.H., Patna has not been rejected by the enquiry officer. The report was submitted before the Senior Superintendent of Police, Patna vide order dated 12.8.2006 inflicting punishment of stoppage of six months salary equivalent to one black mark. In the order of disciplinary authority, he has also recorded the illness of the petitioner but, without giving proper consideration nor recording any findings of the plea of the petitioner of his illness, rejected the explanation and passed the order of punishment. Against that, the petitioner filed appeal before the D.I.G., Patna who also vide order dated 10.5.2007 rejected the appeal and holding that there is no strength in the explanation submitted by the petitioner, whereafter, he has again filed appeal before the Director General of Police and the same has been rejected vide order dated 20.8.2008 on the ground that he has been inflicted only punishment of stoppage of six months salary and, for that, the appeal is not maintainable.

In the present case, there is no dispute that the petitioner was suffering from illness of T.B. and he has taken a specific plea



that he was under treatment at P.H.C.H., Patna and this fact can be verified by calling the record from the office of P.M.C.H., Patna.

The counter affidavit has been filed by State, nowhere the statement has been made that the respondent authorities have ever verified the correctness of his defence by calling document from the P.M.C.H., Patna neither the Disciplinary Authority nor the Appellate Authority has rejected the plea of illness of the petitioner.

Accordingly, the order dated 12.08.2006 passed by the Senior Superintendent of Police, Patna (Annexure-8/1) and the order dated 10.05.2007 (Annexure-8/2) passed by the Deputy Inspector General of Police are set aside and the matter is remanded back for fresh consideration.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2018
Transmission Date	NA

