

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19201 of 2012

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Deonandan Paswan Son Of Late Deocharan Paswan Resident Of Village Ganjpar
Jalalpur, P.O. Maranchi, P.S. Punpun, District Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Patna
2. Director General Of Police, Bihar, Patna
3. Senior S.P. Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : MR. RAM HRIDAY PRASAD, ADV.
MR. MARUTI KUMAR, ADV.

For the respondent/s : MR. M.N.H KHAN, SC-1
MS. BABITA KUMARI, AC TO SC-1

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT
Date: 05-09-2018

Heard Mr. Ram Hriday Prasad along with Maruti Kumar,
learned counsel for the petitioner and Mr. M.N.H. Khan, S.C-1 along
with Babita Kumari, AC to SC-1 for the State.

Petitioner in the present writ application challenges the
order dated 09.10.2007 as contained in Annexure-2 passed by the
Senior Superintendent of Police, Patna, respondent no. 3 dismissing
the petitioner from service.

The facts of the case are that the petitioner was appointed
as a constable in the District of Saran in March, 1974. On 09.03.2007,
the petitioner met with an accident and his right heel got seriously



injured. He was kept under treatment of Dr. Awadhesh Prasad Singh from 09.03.2007 to 11.10.2007. He was declared fit for duty and went in the police line, Patna with a medical certificate and submitted his joining but his joining was not accepted as he was dismissed two days back on 09.10.2007. The grounds for dismissal is that while he was transferred from the District of Patna to Samastipur Police Headquarters vide Memo No. 5838/T dated 22.09.2006, the petitioner did not join his transferred place of duty. The petitioner was transferred by office order no. 11219/2006 on 01.11.2006 but the petitioner did not appear to take the transfer order. The petitioner absented all along as such he was served Memo No. 15869 dated 13.03.2007 and Memo No. 18314 dated 16.09.2007 to show cause as to why he be not dismissed from service on the ground of absenting from duty which was not replied. No departmental proceeding, however, could be initiated as the petitioner was absconding since last one and half years and in spite of repeated reminders, the petitioner did not join duty at the transferred place.

Learned counsel for the petitioner submits that the order of punishment of dismissal on the ground of absence from duty is a harsh one and this Court in a number of judgments have also observed that a delinquent cannot be subjected to major punishment of dismissal for the reason of absence from duty. He relies on the order



passed by the Division Bench in LPA No. 1730 of 2010 dated 02.08.2011 as contained in Annexure-6 series. He, thus, submits that the punishment of dismissal being harsh, the Court would interfere on the quantum of punishment. He further submits that no departmental proceedings has been initiated and the order of dismissal has been passed without holding an enquiry under Section 843 of the Police Manual or serving show cause and is violative of Article 311 of the Constitution. Hence the order of dismissal as contained in Annexure-2 dated 09.10.2007 is unsustainable.

Learned counsel for the State, however, submits that the petitioner was a member of the disciplined force, he remained absent for one and half years without any information and without obeying the orders of his seniors and also not joining the place of transfer. The show cause issued against dismissal was also not replied. Petitioner has annexed a medical certificate as contained in Annexure-1 of a physician and child specialist who treated the petitioner as an outdoor patient on 09.03.2007 to 11.10.2007 for a heel injury who was neither a orthopedic surgeon nor orthopedic physician. Although the petitioner submits that he suffered an injury on 09.03.2007 but the petitioner did not obey the transfer order dated 22.09.2006 and even order dated 01.11.2006 wherein his order of transfer and LPC was duly served/communicated to the petitioner as stated in Para 12 of the



Counter Affidavit filed by Respondent No. 3. The Senior Superintendent of Police, Patna which has not been controverted by the petitioner. Petitioner was given show cause notice under Article 311 (2) (b) of the Constitution of India vide Memo No. 15869 dated 13.08.2007 and Vide Memo No. 18314 dated 16.09.2007 but the petitioner filed no reply and which has neither been controverted. Hence, the petitioner has been dismissed from service for his gross indiscipline, misconduct and negligence in duty and disobeying the orders of the authorities.

Heard the parties.

The petitioner was a constable in the police force and a member of a disciplined force. The petitioner absented himself from duty without any information and without permission of the superior officials. The transfer order dated 22.09.2006 was also not obeyed the show cause issued on 13.03.2007 and 16.09.2007 was also not replied. The medical certificate which is contained in Annexure-1 dated 11.10.2007 is a certificate of a physician and child specialist showing the petitioner as an outdoor patient and also not of an orthopaedic doctor.

Considering the aforesaid facts and the fact that the petitioner belonged to the disciplined force, the order of dismissal dated 09.03.2007 as contained in Annexure-2 issued by the



respondent no. 3, the Senior Superintendent of Police, Patna calls for no interference.

Writ application has no merit. It is dismissed.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2018
Transmission Date	NA

