

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1620 of 2011

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Ramjeet Yadav, S/o Late. Khedu Yadav, R/o Village- Garhi Bishanpur, P.S. Lakhisarai, Distt. Lakhisarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner Cum-Principal Secretary, Department Of Home, Govt. Of Bihar
3. The Director General Of Police, Bihar, Patna
4. The Deputy Inspector General of Police, Purnia, Range, Purnea
5. The Superintendent of Police, Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv.

For the Respondent/s : Mr. Manish Dhari Singh, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 02-07-2018

The present writ application has been preferred for issuance of a writ in the nature of writ of certiorari to quash and cancel the Appellate order bearing no.216 of 2010 contained in memo no.1923 dated 26.11.2010 issued under the signature of Dy. Inspector-General of Police, Purnea Range, Purnea (Respondent No.4) by which the respondent no.4 has been pleased to dismiss the appeal preferred by the petitioner and has affirmed the order of dismissal as contained in Memo No.632 dated 05.04.2005 passed by the Superintendent of Police, Purnia (Respondent No.5).

Brief Facts of the Case.

2. It is the case of the petitioner that the petitioner while



posted as a Constable was placed on duty at the Sadar Court Hazat, Purnia. On 26.02.2005 he was asked by the Sadar Court Hazat In-Charge, Purnia, to take three under trial prisoners for production before the learned Court of Chief Judicial Magistrate, Purnia. Out of the three under trial prisoners who were brought to the Court Hazat for production, one of them namely, Prasant Kumar Yadav managed to flee away from the custody of the petitioner along with hand cuff in course of production before the learned Court. Whereafter, the petitioner handed over the custody of two prisoners to the Sadar Court Hazat, Purnia. The In-Charge of the Sadar Court Hazat, Purnia, registered a written complaint against the petitioner for having allowed the said prisoner, Prasant Kumar Yadav to flee away from the police custody who was an accused in K.Hat P.S.Case No.436/04 and 361/04. A case under Section 224 and 225 of the Indian Penal Code was registered against the petitioner.

3. It is stated that in view of the institution of the F.I.R against the petitioner and the consequent investigation, the petitioner was placed under suspension for the charges of letting the prisoner off from the police custody with effect from 27.02.2005 vide Purnia District order no.218/05. A chare-sheet containing the list of exhibits and the witnesses (Annexure-4) to the writ application was dispatched on the home address of the petitioner. The petitioner claims that after



his suspension and his fixation at Headquarter at Police Line, Purnea, he continued to report and remained present at the Headquarter till 18th March, 2005, it will be evident from the perusal of the attendance chart of the suspended employees for the month of March, 2005. A copy of the attendance chart of the suspended employees has been brought on record as Annexure-5 to the writ application.

4. It is stated that the wife of the petitioner suffered from illness and was placed under treatment of Dr. Sri. Narayan Prasad Singh who was posted as Assistant Civil Surgeon, Lakhisarai. The Doctor gave the finding that wife of the petitioner suffered from viral Hepatitis (Jaundice) and, was, accordingly, advised to remain in complete bed rest since 15.03.2005 onwards the date on which she was diagnosed by the said Doctor for the first time. The Medical Certificate relating to illness of the wife of the petitioner has been annexed as Annexure-6 to the writ application.

5. It is submitted that within a short span of time the Superintendent of Police, Purnea, in view of his gathered and misplaced apprehension and based on his presumptions and assumptions, issued Memo No.632 dated 05.04.2005 in exercise of his powers under Clause (b) of second proviso to Article 311 (2) of the Constitution of India whereby and whereunder, the Superintendent of Police, Purnia, (Respondent No.5) took a view that it is practically not



possible to hold an enquiry against the petitioner because the petitioner was absconding and because most of the witnesses in the departmental proceeding are the police officials who are members of the Police Men's Association, therefore, they are also likely to come under pressure over the period and may become hostile which may result in ultimate acquittal of the petitioner and upon taking this view the Superintendent of Police, Purnea, dismissed the petitioner from service by dispensing with the requirement of the departmental proceeding.

6. Being aggrieved and dissatisfied with the dismissal order passed by the Superintendent of Police, Purnea, the petitioner preferred a statutory appeal before the Deputy Inspector General of Police, Purnia Range, Purnia, but the said appeal was also rejected vide order as contained in Memo No.171 dated 03.03.2006 (Annexure-8 series).

Previous writ petition.

7. The petitioner thereafter, moved this Court vide CWJC No.4748 of 2006 which was allowed vide order dated 16.07.2009 holding that the order of the appellate authority was not a reasoned order. The appellate authority was directed to pass a reasoned order within a period of six months from the date of receipt/production of a copy of this order. A copy of the order passed by the learned writ



Court has been brought on record as (Annexure-11 series). The Court however, while remitting the matter back to the appellate authority had not recorded any opinion on the merits of the case. As directed by the learned writ Court, the appellate authority (respondent no.4) has once again considered and passed a final order on the appeal preferred by the petitioner, the order passed by the appellate authority as contained in Memo No.1923 dated 26.11.2010 (Annexure-12) is now under challenge in the present writ application.

Submissions.

8. The contention of learned counsel representing the petitioner is that the petitioner had joined the police force as a Constable on 01.02.1982 and during the long period of his police service spanning over more than two decades his record has been reasonably good. The petitioner was never awarded either minor or major punishment for any alleged misconduct or dereliction of duty or indiscipline. It is stated that on the contrary the petitioner was given six awards in recognition of his commendable performance and duty. It is submitted that the petitioner had not deliberately and consciously evaded the course of law nor defied the process of law. The petitioner had applied for anticipatory bail in the criminal case lodged against him and this Court while considering his prayer for anticipatory bail in Cr.Misc.No.35981 of 2005 granted him the privilege of



anticipatory bail, therefore, it cannot be said that the petitioner was absconding and was not willing to participate in the departmental proceeding. Petitioner was seeking his remedy in accordance with law but the Superintendent of Police, Purnea, acted in a hot-haste and dismissed the petitioner by taking a view that it is not reasonably practicable to hold enquiry against the petitioner.

9. Learned counsel for the petitioner further submits that the reasons and logic given by the Superintendent of Police, Purnea, in the impugned order of dismissal for dispensing with the departmental enquiry are totally irrelevant considerations and in fact, those considerations cannot be a ground to invoke the doctrine of pleasure as envisaged under Clause (b) of second proviso to Article 311 (2) of the Constitution of India. Reliance has been placed on a Division Bench judgment of this Court in the case of **State of Bihar and ors. v. Dr. Chandra Kishor Lal** reported in **2007 (3) PLJR 629** to canvass that in the Fodder Scam Case when a raid was conducted in the house of the accused and he was not found at his residence and the accused did not attend his duty since 4th February, 1996 and the impugned order of dismissal was passed on 11th March, 1996 this Hon'ble Court held that in the given circumstance, it cannot be said that the accused was absconding and hence the order of punishment was quashed directing the authority concerned to proceed with the



enquiry de novo.

Stand of the Respondent No.5.

10. A counter affidavit has been filed on behalf of respondent no.5. Respondent no.5 has supported the impugned order of dismissal on the grounds stated therein. In the counter affidavit it is stated that even though the petitioner was present till 18.05.2005 (seems to be a typographical error for 18.03.2005) in the Police Line at Purnea but remained absent thereafter. As regards the case lodged against the petitioner it is stated that the petitioner informed about the absconding accused after an inordinate delay of 50 minutes whereas, it should have taken a maximum time of five minutes. In the supervision note of the said criminal case it is stated that the petitioner had facilitated free movement to the under trial prisoner outside the Court campus and taking the advantage of this liberty the under trial prisoner was able to escape. A copy of the supervision note has been brought on record vide Annexure-A to the counter affidavit. In Paragraph No.-6 of the counter affidavit it is stated that in view of the supervision note submitted by the Sergeant-Major, Police Line, Purnea, charges were framed against the petitioner and a departmental proceeding was initiated, arrest order was also issued against him but the petitioner absconded from the Police Line, Purnea, just to avoid his arrest for which he did not seek permission or leave of any kind as



per the provision.

11. Regarding medical certificate of his wife, it is stated that the certificate about the wife's ailment was procured from a private Doctor whose authenticity is not above suspicion. In Paragraph No.9 of the counter affidavit it is stated that due to his apprehension of his being arrested, the petitioner was absconding and he appeared in the case after he was allowed anticipatory bail by the Hon'ble Court. The criminal case is said to be the proceeding against him.

12. Initially no appeared on behalf of the State to represent the case even though the matter was heard for quite long time on 29.06.2018 but today when the matter has been listed under heading 'Judgment' Mr.Manish Dhari Sigh learned A.C. to A.G. appears and has placed the stand of respondent no.5 as disclosed in the counter affidavit which I have taken note of in detail for consideration.

Findings.

13. In the present case as it appears that from the records and the submissions advanced before this Court the alleged occurrence took place on 26.02.2005, admittedly the petitioner remained present in the Police Line, Purnea, till 18th March, 2005 which is evident not only from the attendance sheet of the suspended



employees enclosed with the writ application, but also from the admission of the respondent no.5 in his counter affidavit. It is also evident that the petitioner was seeking his remedy for anticipatory bail and in the process he had moved the Hon'ble High Court at Patna vide Cr.Misc.No.35981 of 2005. The fact that the Criminal Miscellaneous Application was filed in the year 2005 itself which got disposed off only on 07.03.2006 makes it clear to the Court that the petitioner had been seeking his remedy available to him in law well in time and there was no inordinate delay on his part in moving the Court.

14. It further reveals that the petitioner was placed under suspension w.e.f 27.02.2005 and his Headquarter was fixed at Purnea where he was reporting for about 20 days till 18th March, 2005. A charge-sheet was framed against him and an attempt was made to serve the same but immediately within 11 days thereafter, the Superintendent of Police, Purnea, decided to dispense with the departmental enquiry taking a view that the petitioner was absconding, most of the witnesses are from the Police force who are members of the Police Men's Association and are likely to become hostile which may facilitate acquittal of the petitioner.

Consideration.

15. In the given facts and circumstances, the question which arises for consideration by this Court is as to whether the



reasons provided by the Superintendent of Police, Purnea, to dispense with the departmental enquiry against the petitioner by invoking the doctrine of pleasure is justified. Before we look into the reasons and test them on the anvil of Article 14 and 16 of the Constitution of India, it would be just and proper to take note of Articles 310 (1) and 316 of the Constitution of India which reads as under:-

“310. Tenure of office of persons serving the Union or a State.- (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the service of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.”

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.- (1) No person who is a



member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

16. In the case of **Union of India and Another vs.**



Tulsiram Patel, reported in AIR 1985 Supreme Court 1416, in Paragraph 130 the Hon'ble Supreme Court was considering the question as to what is the requisite of that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The Hon'ble Apex Court observed that it is not possible to enumerate the cases in which it would be not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. Thereafter, the Hon'ble Apex Court explained that it would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with a fear of reprisal as to prevent them from doing so. Further, it would also not be reasonably practicable to hold the inquiry where an atmosphere of violence of general indiscipline and insubordination prevails.

17. The Hon'ble Supreme Court considered the challenge to the pleasure doctrine and took note of the fact that Article 310 (1) provides a constitutional sanction to the doctrine of pleasure. Unlike in the United Kingdom in India, it is not subject to any law made by the Parliament but is subject only to what is expressly provided by the Constitution. Paragraph 43 (A) and Paragraph 45 from the judgment of Tulsiram Patel (Supra) are quoted herein for ready reference:-

“43A. The position that the pleasure doctrine is not



based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in State of Uttar Pradesh v. Babu Ram Upadhyaya (1961) 2 SCR 679, 696 : (AIR 1961 SC 751 at P. 759) and Moti Ram Deka v. General Manager, N.E.F. Railways, Maligaon, Pandu, (1964) 5 SCR 683, 734-5 : (AIR 1964 SC 600 at Pp. 620-21). This Court has also accepted the principle that society has an interest in the due discharge of their duties by government servants. In Roshan Lal Tandon v. Union of India (1968) 1 SCR 185 : (AIR 1967 SC 1889) Ramaswami J., speaking for the Court, said (at page 195 of SCR) : (at P. 1894 of AIR):

“It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.” (Emphasis supplied). 21. In conclusion, the doctrine of pleasure embodied in Article 310(1) of the Constitution of India has been upheld on the ground of public policy and in the public interest for the public good. Paragraph 45 of the said judgment is quoted hereunder for a ready reference:



“45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.”

18. The doctrine of pleasure embodied under Article 310 (1) of the Constitution of India has been upheld on the ground of public policy and in the public interest for the public good. It is true that in the case of *Tulsiram Patel* (Supra) the Hon'ble Apex Court has made it categorically clear that the assessment of situations for application of doctrine of pleasure would be a matter of satisfaction of the disciplinary authority and it would be the disciplinary authority who will be the best judge to make a decision in this regard but at the same time in the case of **Govt. of A.P. & ors. Vs. Md. Nasrullah Khan** reported in **(2006) 2 Supreme Court Cases 373** the Hon'ble Apex Court has while considering the extent of the powers of judicial review in such matters held that the satisfaction of the disciplinary authority, if found perverse the same may be interfered with in exercise of powers of judicial review by the High Court.

19. In the aforementioned background of the judgment of the Hon'ble Supreme Court in the case of **Tulsiram Patel**(supra) a Division Bench of this Court in the case of **State of Bihar and ors. v.**



Dr. Chandra Kishor Lal reported in **2007 (3) PLJR 629** in **Paragraph Nos.4, 5, 6 and 7** held as under:-

“4. Two facts were known to the disciplinary authority, namely, (1) that on 5th February, 1996, a raid was conducted by the police at the residence of the writ petitioner-respondent when he was not found at his residence; and (2) that the writ petitioner-respondent is not attending his office from 4th of February, 1996 until 11th March, 1996. The question is whether a reasonable man, on the basis of these facts, could conclude or opine that the writ petitioner-respondent is absconding and, therefore, it is not reasonably practicable to hold an enquiry.

5. When the police conducted raid at the residence of the writ petitioner-respondent, it is possible that the writ petitioner-respondent, for genuine reasons, was not present at his residence and at the same time, it is also possible that in order to avoid his arrest, the writ petitioner-respondent removed himself from his residence at the time when the raid was conducted. In both the situations, it could not be concluded that the writ petitioner-respondent was absconding to avoid disciplinary proceeding.

6. Bihar Service Code, which also governs part of the service conditions of the writ petitioner-respondent, in clause 76 thereof, provides that if a person remains absent from duty continuously for five years with or without leave, he shall cease to be in Government employment. In other words, if a person remains absent continuously for five years with or without leave, the same shall be deemed that the Government servant has abandoned his Government employment. When such is the condition of service, merely because the writ petitioner-respondent remained absent from duty for a period in excess of a month and seven days, could it be opined that the writ petitioner-



respondent is absconding to avoid disciplinary proceeding. It does not appear to us that the same could be a conclusion of a reasonable man.

7. The question is could a reasonable man combining these two informations could come to a conclusion that the person concerned absconding and, accordingly, it would not be reasonably practicable to hold an enquiry? A disciplinary proceeding is a separate independent proceeding than that of a criminal proceeding. It is now well settled in law that on the self same charges, a criminal proceeding as well as a disciplinary proceeding may be launched. In course of criminal investigation, the police has power to search, seize and arrest and, accordingly, may conduct raids for the purpose of search, seize as well as for the purpose of arrest, when the person against whom such investigation is in progress may devise his affairs in the manner which is most suitable to him. Because on a raid, the person could not be arrested or could not be apprehended and proceeding on the basis that to avoid such arrest, the person concerned did not attend to his duty for a period of a month and seven days, it could not be concluded that it would not be reasonably practicable to hold an enquiry because the person concerned is absconding. The question is absconding from whom? If the person is absconding from police, the situation is one but in the matter of dispensing with the enquiry, the conclusion must be that he is absconding for the purpose of avoiding the enquiry. We feel that on the basis of the informations as were available, it could not be concluded by the disciplinary authority that the writ petitioner-respondent was absconding to avoid enquiry, as it could not be held so by a prudent person, and, accordingly, no opinion could be expressed that it was not reasonably practicable to hold an enquiry.”

20. In the case of Jaswant Singh v. State of Punjab and



Others reported in **AIR 1991 (78) SC 385** the Hon'ble Supreme Court was dealing with the case of dismissal while invoking doctrine of pleasure, the Hon'ble Apex Court discussed the pleasure doctrine and the case the various judgments on the subject including the one in the case of **Tulsiram Patel** (supra) and in Paragraph 5 at Page390 inter alia held as under:-

“It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent no.3 in the impugned order. Clause (b) of the second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at p. 270 (if 1985(Supp) 2 SCR 131) : (at P. 1479 of AIR 1985 SC 1416) of Tulsi Ram's Case:

A disciplinary authority is not expected to dispense with a disciplinary authority lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail.

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer”.

21. Keeping in mind the aforementioned judicial



pronouncements on the subject when this Court looks into the reasons disclosed by the Superintendent of Police, Purnia, (respondent no.5) for dispensing with holding of the departmental enquiry, it is found that basically two grounds have been given for the same, firstly, that the petitioner was absconding and secondly, that most of the witnesses are the members of the police force who are likely to become hostile in future and the same would result in acquittal of the petitioner.

22. When the two reasons disclosed in the impugned order are tested in the facts of the present case, it would appear that this petitioner was placed under suspension on 27.02.2005, his Headquarter was fixed in the Police Line at Purnea, where he admittedly remained present till 18th of March, 2005. It is the case of the petitioner that his wife was suffering from viral Hepatitis (Jaundice) and in that connection she was under treatment of Dr. Sri. Narayan Prasad Singh. The stand of the respondent is that the medical certificate has been procured from a private Doctor whose authenticity is not above suspicion, even if that stand of the respondent is accepted, the fact remains that with an intention to initiate a departmental proceeding, the respondent issued a charge-sheet as contained in Memo No.496 dated 23.03.2005 containing the list of exhibits and the witnesses which was dispatched on the home address of the petitioner. The petitioner was called upon to submit a



show cause within a week from the date of receipt of the letter containing the charge-sheet, the petitioner as it appears was looking for his remedy of anticipatory bail during this period. The Superintendent of Police, Purnea, however decided to dispense with holding a departmental enquiry and passed an order of dismissal on 05.04.2005 meaning thereby that within 13 days (inclusive of the date of charge-sheet and the date of the decision to dismiss the petitioner without holding an enquiry) the respondent no.5 changed his mind. The question which arises for consideration is that whether the Superintendent of Police, Purnia, was justified in taking a view within a period of 13 days only (inclusive the date of charge-sheet and the date of dismissal) that the petitioner has absconded and it would not be possible to hold the departmental enquiry.

23. A perusal of the impugned order passed by the Superintendent of Police, Purnea, shows that he took a view that the petitioner is absconding and has not submitted his reply to the show cause notice and, therefore, in future also during the continuance of the enquiry proceeding he can appear before the Inquiry Officer and after receiving notice can create hindrance in the departmental proceeding.

24. The Superintendent of Police, Purnea, also held that the departmental enquiry is not progressing. In the opinion of this



Court, the Superintendent of Police, Purnea, has acted unreasonably and in hot haste. Only within 13 days (inclusive the date of charge-sheet and the date of dismissal) he was not justified in coming to the conclusion that the petitioner is absconding and in future he will create hindrance in the enquiry proceeding. The Superintendent of Police, Purnea, has assumed on his own without there being any material that the petitioner would appear in the disciplinary proceeding and after receiving notice will create hindrance in conclusion of the departmental proceeding.

25. I have taken note of the relevant paragraph of the judgment in the case of **Dr. Chandra Kishor Lal** (Supra) wherein this Court took note of the fact that the writ petitioner of the said case was not attending his office from 4th of February, 1996 until 11th March, 1996 and held that merely because the writ petitioner remained absent for a period in excess of a month and seven days, it cannot be reasonably concluded by the disciplinary authority that the writ petitioner was absconding to avoid enquiry. This Court also held that if a person is absconding from police in the given circumstance, the same cannot be a matter of conclusion for the purpose of dispensing with the enquiry holding that he is absconding for the purpose of avoiding the enquiry.

26. In view of the Hon'ble Division Bench judgment of



this Court in the case of **Dr. Chandra Kishor Lal** (supra) and given the facts of the present case, I would have no hesitation that the first ground given by the Superintendent of Police, Purnea, saying that the petitioner was absconding because of threat of his arrest and, therefore, he will have no respect for the departmental enquiry and that in future he can appear in the departmental proceeding and disturb the same cannot sustain the test of reasonableness as envisaged under Article 14 of the Constitution of India.

27. Now coming to the second ground given by the Superintendent of Police, Purnea, this Court finds that it is worst than the first ground. In the opinion of this Court, the Superintendent of Police, Purnea, was not justified in dispensing with the departmental proceeding only because he was apprehending and had been of the view that in future the witnesses who are Members of the Police Force and those who are from outside will also become hostile under the pressure of the Police Men's Association and others. Superintendent of Police, Purnea, has recorded this reason on surmises and conjectures alone. In the concluding part of the impugned order (Annexure-7), the Superintendent of Police, has recorded certain facts which are not relevant for the purpose of deciding the question which has arisen for consideration in the present case. To this Court, it appears that even the appellate authority while considering the appeal



preferred by the petitioner has not considered as to whether or not in the facts of the present case, the Superintendent of Police, Purnea, was justified in dispensing with the departmental enquiry against the petitioner within a period of 13 days from the date of issuance of charge-sheet calling upon the petitioner to show cause.

28. This Court is at this stage not expressing any opinion on the merit of the case but going through the pleadings available on the record, the Court would come to a conclusion that the impugned orders as contained in Annexure-‘7’ passed by the Superintendent of Police, Purnea, and the impugned order as contained in Memo No.171 dated 03.03.2006 passed by the Dy. Inspector-General of Police, Purnea Range, Purnea, cannot sustain and are liable to be set-aside. The views expressed by Hon’ble Apex Court in the case of **Dr.Chandrakishore Lall (supra)** fully support the case of the petitioner.

29. In result, the impugned orders are set-aside. The matter is remitted back to the Superintendent of Police, Purnea, (respondent no.5), who will proceed from the stage of the charge-sheet dated 23.03.2005 as contained in Annexure-4 to the writ application. Respondent No.5 shall take all such steps which may be required in accordance with law to conduct the disciplinary proceeding and conclude the same within a period of three months



from the date of receipt/production of a copy of this order. The present order is being passed setting-aside the impugned orders only on the ground of violation of principles of natural justice, therefore, the petitioner would only be reinstated in service for the purpose of completion of departmental proceeding, so far as the question of consequential benefits are concerned, the same would be subject to the final outcome of the disciplinary proceeding and the order which may be passed by the disciplinary authority in this regard.

30. The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	AFR
CAV DATE	
Uploading Date	09.07.2018
Transmission Date	

