

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3383 of 2014

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Jai Shankar Singh Son Of Late Braj Kishore Singh Resident Of Village Manikpur,
P.S. Shakund, District Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Bihar Old Secretariat,
Patna
2. The D.I.G., C.I.D. Bihar, Patna
3. The S.P. (C) C.I.D. Bihar, Patna

.... Respondent/s

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For the Petitioner/s	:	M/s Gajendra K Jha, Bam Bahadur Jha, Advs
For the S t a t e	:	Mr Yogendra Pd Sinha, AAG VII with Mr Shankar Kumar, AC to AAG VII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 13-07-2018

Heard the learned counsel for the petitioner and the
respondent-State.

2 The petitioner has challenged his dismissal from
service under order dated 29.07.2011 under Memo No 2048 issued by
the Superintendent of Police (C), Crime Investigation Department (for
brevity, *CID*), Bihar. He has also challenged rejection of his Appeal
under order dated 30.01.2013 passed by the Deputy Inspector General
of Police (for brevity, *DIG*), CID as well as rejection of his Memorial
by the Director General of Police (for brevity, *DGP*), Bihar, Patna
under order dated 12.12.2013.

3 Petitioner has been proceeded against for being absent



continuously from 07.07.2006 till 26.07.2011. Later on, after conclusion of enquiry, petitioner has submitted an application for joining on 09.01.2013 mentioning that he was undergoing treatment in the Clinic of one Dr Ashok Kumar Prasad since 05.11.2009 and he has been declared fit to resume duty on 26.12.2012 itself. The case of the petitioner is that he was not even served copy of the enquiry report.

4 Respondents, on the other hand, disputed the claim of the petitioner giving reference to specific correspondence. It has been asserted that the charge memo was issued to the petitioner at his home address given in his service book. It is also submitted in the counter affidavit that opinion of the Conducting Officer was sent to the petitioner at his home address by Special Messenger and received by the petitioner on 05.07.2009. Another show cause notice under Memo No 3046 was sent by registered post on 23.12.2009 and, thereafter, a show cause notice under Memo No 1188 dated 11.05.2010 was sent by Special Messenger which was received by the petitioner on 13.05.2010.

5 The said specific details regarding communication of the enquiry report has not been denied or disputed by filing any rejoinder. The plea of the petitioner is that he was undergoing treatment for some mental ailment during the said period. But the response of petitioner was not received by the Disciplinary Authority and, therefore, the order of punishment terminating the petitioner



came to be issued on 29.07.2011 under Memo No 2048 by the Superintendent of Police (C), CID, Bihar, Patna.

6 The admitted position is that the petitioner, for the reasons indicted hereinabove, had not participated in the enquiry neither before the Enquiry Officer, nor he had submitted any response to the Conducting Officer/Enquiry Officer. Action has been taken against the petitioner exercising power under Rule 76 of Bihar Service Code.

7 Automatic cessation of service contemplated under the earlier provisions of Rule 76 of Bihar Service Code has subsequently been amended by the State itself. Rule 76, as it exists today, requires an opportunity of hearing. Removal of any employee who has been absent for five years or more can be done only after affording him an opportunity and following the procedure laid down in the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The said opportunity envisaged under Rule 76 of the Bihar Service Code is to enable the employee who has been absent for five years or more to show whether the absence amounted to a misconduct or not. The petitioner's plea that he was ill and could not attend to his duty was, therefore, at least required to be examined by the authority who were hearing the appeal of the petitioner, even though he had chosen not to appear before the Disciplinary Authority.

8 The appeal of the petitioner has been disposed of by a cryptic and non-speaking order. The order is dated 30.01.2013



bearing Memo No 5 issued by the DIG, CID. Though the petitioner has placed on record various medical prescriptions that he was undergoing treatment, the same has not been considered. Only if due consideration had been given to the petitioner, the respondents could arrive at a conclusion regarding the genuineness of his claim. The same has not been done nor any reason has been assigned. Merely because the petitioner has been absent for five years and 20 days and merely because he has been made an accused, the Disciplinary Authority's order of removal under Rule 76 has been affirmed by the Appellate Authority.

9 Absence per se, in view of the amended provisions of Rule 76, does not contemplate automatic cessation of the petitioner's service. Since an opportunity is contemplated under the amended Rule 76, the authorities should have considered the petitioner's plea in respect of his absence which has not been done. The petitioner's Memorial has also been rejected by similar non-speaking order by the DGP, Bihar under order dated 12.12.2013 bearing Memo No 5601. The two orders passed by the Appellate Authority, as also the Authority rejecting the Memorial are without assigning any reason show a total non-consideration of petitioner's plea of illness.

10 This Court would not comment on the genuineness of the claim. That is an issue to be considered by the authorities. The only concern of the Court is that they are obliged to assign reasons for the order. Non-assigning of reasons leaves scope for the decision to



be challenged on ground of arbitrariness and reduces the remedy of Appeal and Memorial to an empty formality.

11 In view of the findings that both the orders of the Appellate Authority dated 30.01.2013 and that of the Authority disposing of the petitioner's Memorial under order dated 12.12.2013 are without assigning any reason and show total non-consideration of the petitioner's case. The orders dated 30.01.2013 and 12.12.2013 are hereby quashed.

12 The matter is remitted back to the Appellate Authority. The Appellate Authority would be obliged to consider the petitioner's claim by observing a procedure in accordance with law and affording due opportunity to the petitioner. The observations made by this Court may not be treated to be an expression of the genuineness of the petitioner's claim regarding his illness.

13 The Appellate Authority, however, shall be obliged to take a final decision by a reasoned and speaking order in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

14 The writ petition is disposed of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.07.2018
Transmission Date	NA

