

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.214 of 2018

In

Civil Writ Jurisdiction Case No.9039 of 2014

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Tipu Singh, Son of Sudheshwar Singh, Resident of Village- Nargada, P.O. Balua, P.S. Krishnagarh, District- Bhojpur (Ara).

... .. Appellant/s

Versus

1. The Union of India through Secretary, Home Affairs, Govt. of India, New Delhi.
2. The Director, Central Reserve Police Force, Block No. 1, Central Office Premises, Lodhi Road, New Delhi- 03.
3. Inspector General COBRA Sector, C.R.P.F., Old Secretariat, Civil Lines, Delhi-54.
4. Deputy Inspector General (Administration), C.R.P.F., Cobra Sector, Old Secretariat, Civil Lines, Delhi-54.
5. Commandant, 205, COBRA, CRPF, Barwadih, Gaya (Bihar).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. S.D Sanjay (Addl. Soc. Gen.)
Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2018

Seeking exception to an order passed by the Writ Court on 04.09.2017 in Civil Writ Jurisdiction Case No.9039 of 2014, this appeal has been filed under Clause 10 of the Letters Patent.

Appellant was a member of a disciplined Armed Force, namely COBRA battalion, Central Reserve Police Force. On account of the fact that he was unauthorisedly absent for more than 194 days, a departmental proceeding was held against him and on the basis of the finding of guilt recorded in the departmental



enquiry, he was removed from service. The removal was challenged before the appellate authority and the revisional authority and after dismissal of both these statutory appeal and revision, the matter came to the Writ Court. The Writ Court examined the matter and found that no indulgence can be made with regard to the conduct of a member of a disciplined force, who remains unauthorisedly absent without any just cause or reason for a long period of time, it was also found that the departmental enquiry was properly conducted.

When the matter was being heard by us on the last date, a grievance was made that the enquiry was conducted in an illegal manner, the enquiry was conducted by the enquiry officer himself who acted as a prosecutor without appointing any presenting officer. Taking note of the aforesaid grievance, we requested the learned counsel representing the Union of India to produce the original records of the enquiry and today, the entire original records of enquiry has been produced before us and we find from the original records that after the charges were framed, the same was communicated to the appellant by registered post with acknowledge due on the address of the appellant. In spite of service of charge-sheet, the appellant did not respond to the same nor submitted any explanation or defence before the disciplinary



authority, therefore, the disciplinary authority was constrained to appoint an enquiry officer and from the proceedings of the enquiry commencing from 17th of May, 2011, we find that initially, the enquiry officer sent notice for appearance of the appellant fixing the enquiry on 26th of May, 2011. In spite of notice, the appellant did not appear and, therefore, the enquiry officer recorded the statement of eight witnesses who appeared along with the attendance register and other documents which indicated the nature of absence of the appellant and communication made to the appellant for reporting of duty and no response was made. The enquiry officer forwarded to the appellant the statements of all the witnesses and sought his response. The appellant again continued with his slumber, did not respond to the aforesaid and, therefore, the enquiry officer was compelled to proceed in the matter *ex parte*, submitted his report to the competent authority along with his covering memo, as is evident from findings of the enquiry officer dated 15.10.2011. Based on the findings of the enquiry officer, again a show cause notice was issued to the appellant which was not responded by the appellant, therefore, impugned action was taken.

Considering the manner in which the appellant refused to participate in the enquiry and did not avail the opportunity



granted to him, we find no case for indulgence into the matter on account of failure of reasonable opportunity of defence to the appellant. The appellant himself is to be blamed for the situation created by him. Merely because it is a case of unauthorised absence only, we cannot condone the conduct of the appellant in the backdrop of the fact that he belongs to a member of disciplined force and he cannot be allowed to behave in the manner as has been done and indicated hereinabove.

Accordingly, finding, no ground to make any indulgence into the matter, we dismiss the appeal.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
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