

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1272 of 2016

In

Civil Writ Jurisdiction Case No.8238 of 2005

=====

Binod Kumar Malakar, S/o Sri Ved Prakash Malakar, resident of Village-
Mungaraura, P.O- Jamalpur, P.S- East Colony, District- Munger.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General -cum- Inspector General of Police, Bihar, Patna.
3. I.G., B.M.P., Bihar, Patna.
4. D.I.G. B.M.P., Uttari Mandal, Muzaffarpur.
5. Commandant, B.M.P.-9, Jamalpur.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Nazmul Hoda, Adv.
		Mr. Brij Nandan Kumar, Adv.
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG 3

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 17-12-2018

Heard Mr. Nazmul Hoda, learned counsel for the
appellant and Mr. Suman Kumar Jha, learned AC to AAG 3.

This intra-court appeal arises from the judgment and
order dated 27.04.2009 passed by the learned Single Judge in
C.W.J.C. No. 8238 of 2005 whereby the learned Single Judge has
been pleased to dismiss the writ petition.

This appeal was belated by many a years but taking note
of the explanation so given in the condonation application that by



order dated 26.11.2018, we condoned the delay to hear the appeal on merits because the foundation for the argument advanced by Mr. Hoda was that the appellant was not allowed to participate in the disciplinary enquiry.

Be it noted that the appellant -writ petitioner was a member of the uniformed service having been appointed on a class IV post in June, 1991. The petitioner was found in an inebriated condition and in possession of stolen articles when he was apprehended on 02.06.2000 though he had taken leave for the day. A disciplinary proceeding was initiated by service of charge memo on 08.08.2000. A defence was taken by the petitioner that since he was in an inebriated condition he was not aware of what happened on the day. In the regular enquiry that followed the appellant- petitioner did not appear. According to Mr. Hoda, the appellant- writ petitioner was not permitted to appear and as a consequence the evidence of the witness went uncontested and led to the dismissal order. Even the appeal was dismissed on 30.09.2002. Feeling aggrieved, he approached this Court when a stand was taken of denial of reasonable opportunity to cross-examine the witness but learned Single Judge taking note of the seriousness of the charge as well as the evidence accompanying the charge did not interfere with the order to



dismiss the writ petition and feeling aggrieved that he is before this Court when parties have been heard.

We have gone through the memo of charges which is rather serious because being the member of uniformed service the appellant- petitioner was expected to maintain utmost discipline. The charge memo would confirm that not only he was found in an inebriated condition rather the misconduct was perpetuated when this appellant-petitioner was apprehended with stolen articles. It is because Mr. Hoda was very sanguine on denial of opportunity to the appellant- petitioner to cross-examine the witnesses led in support of the charges that we summoned the file which has been produced by Mr. Jha, learned State counsel today and the documents on record would confirm that the appellant petitioner was given notice about the dates on which the enquiry is to take place and which notice bears the signature of the appellant-petitioner. Meaning thereby, he had knowledge about the proceeding as well as the dates fixed therefor.

In such circumstances, if the appellant petitioner did not choose to participate in the enquiry or to cross-examine the witness, the entire responsibility for such failure lies on him and he cannot allege a denial of opportunity by the Department. The issue of non disposal of objections raised in the second show



cause, so seriously pressed by Mr. Hoda also does not come to the rescue of the appellant- petitioner because the defence taken by him in the second show cause also does not absolve him to the charges so serious leveled against him and substantiated through evidence so led. The scope of intervention with an order passed in a disciplinary proceeding is rather circumscribed for this Court does not sit in appeal over the opinion expressed by the disciplinary authorities save and except where it runs counter to the evidence on record and/ or where it is an outcome of bias or the proceeding is held in violation of the principles of natural justice.

In our considered opinion, none of these issues are present in the present case for the opportunity so given to the appellant petitioner to defend himself has gone asking and the proceedings have been held in the manner prescribed. Considering that the charges are so serious, we are also not persuaded by the argument of learned counsel for the appellant on the quantum of punishment for the appellant- writ petitioner being a member of the uniformed service, he cannot be let of the charges so serious as it transpires from the memo of charges.



For the reasons so discussed, we are not persuaded to interfere with the judgment and order of the learned Single Judge impugned in this appeal.

The appeal is dismissed.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Bibhash/Ranveer

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.01.2019
Transmission Date	NA

