

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1392 of 2015

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Brajnandan Singh Son of Late Kedar Singh resident of Village- Khaira(Mahsoni),
Post-Kajra, P.S. - Piri Bazar, District- Lakhisarai

.... **Petitioner**

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
4. The Superintendent of Police, Samastipur

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Prashant Sinha, Advocate,
Mr. B.Jha, Advocate and
Mr. Rohan Verma, Advocate

For the Respondents : Mr. Rakesh Kr.Srivastava, AC to GP15

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 02-07-2018

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

2. The petitioner has been dismissed from service vide
order dated 31.12.2008 (Annexure 4), passed by the
Superintendent of Police, Samastipur on account of his over stay
on leave for the alleged period of about 10 years in between
10.5.2003 to 7.5.2013.

3. Though he was granted leave of 10 days plus two
days extra on 10.5.2003, he never returned to his duty in the
District Force prior to 7.5.2015. When the petitioner submitted his
joining, he was informed that he has been dismissed from service



on account of his overstay on leave.

4. Learned counsel for the petitioner has relied upon various prescriptions of the doctors to say that he was mentally ill and was under continuous treatment till 7.5.2013. It is his submission that had the authorities applied the procedure laid down under Rule 843 of the Bihar Police Manual and called for a report from the Superintendent of Police (S.P.) of his native village, the issue of his being mentally ill would have come to their notice. He submits that non compliance of the said procedure invalidates the order of dismissal, since such vital opportunity of enquiry by the Superintendent of Police of his native village has been denied to the petitioner.

5. It is the submission of the petitioner that in case of other similarly situated employees, who too have been declared deserters, the authorities have taken a different/lenient view of the matter and in his case, they awarded the punishment of dismissal from service which is grossly disproportionate, if his illness is considered.

6. It is the admitted case of the petitioner that he was absent for the said period as it is his case that, it is only when he went to submit his joining, he was informed that he has already been dismissed by the S.P., Samastipur. Thereafter, he obtained



the copies of the memo of charge and the punishment order dated 31.12.2008 (Annexure 4 series).

7. The only issue which remains for consideration is whether the petitioner, in view of the lesser punishment given to others, who he alleges are similarly situated delinquent employees by the authorities, the petitioner would also be entitled to the similar treatment regarding the quantum of punishment having regard to his continuous mental illness. Learned counsel for the petitioner submits that from bare perusal of the appellate order dated 17.9.2013 (Annexure 7), passed by the D.I.G. of Police, Darbhanga as well as the order passed by the D.G.P. while disposing of the memorial under order dated 20.11.2014 (Annexure 8) it is apparent that they have not considered this aspect of the matter.

8. In view of the limited submission made on behalf of the petitioner, this Court does not find it appropriate to keep the writ petition pending. Therefore, it is disposed of with liberty to the petitioner to submit his comprehensive representation before the D.G.P., Bihar (respondent no.2) by way of memorial so as to reiterate his submission in this respect regarding parity in punishment keeping in view the gravity of the allegation, with reference to the mitigating circumstances of illness. Respondent



no.2 would be obliged to consider and dispose of the same by a reasoned and speaking order showing due consideration with respect to the points raised by the petitioner within a period of eight weeks from the date of receipt/production of a copy of the comprehensive representation along with a copy of this order, which should be filed within a period of two weeks.

9. It is made clear that earlier disposal of the memorial under order dated 20.11.2014 (Annexure 8) shall not stand in the way of respondent no.2 in considering petitioner’s application.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
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