

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12182 of 2012

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Ramesh Ram S/O Shri Godhan Ram Resident Of Village Baraon Kala, P.S.
Akorhigola, District Rohtas.

.... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Home (Police) Department, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Shahabad Range, Dehri On Sone (Rohtas).
4. The Superintendent of Police, Bhojpur.
5. The Deputy Superintendent of Police, Ara (Bhojpur).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudama Singh, Adv.
Mr. Surendra Kumar Mishra, Adv.
Respondent/s : Mr. Sajid Salim Khan, SC-25
Ms. Prakritita Sharma, AC to SC-25

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 06-09-2018

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

Petitioner in the present writ application has sought
quashing of the order dated 13.10.2007 passed by the respondent no.
4, the Superintendent of Police, Bhojpur as contained in Annexure-1
whereby the petitioner was dismissed from the post of constable.
Petitioner further challenges the order dated 16.07.2009 passed by the
respondent no. 3, the Deputy Inspector General of Police, Shahabad



Range, Dehri, District-Rohtas as contained in Annexure-2 to the writ application whereby his appeal has been rejected and also the order dated 14.03.2012 as contained in Annexure-3 whereby the memorial filed before the respondent no. 2, the Director General of Police, Bihar, Patna was also rejected.

The facts of the case are that the petitioner was appointed on a sanctioned vacant post of constable in Kaimur District on 16.09.1999 as contained in Annexure-4. Petitioner was transferred to Bhojpur District in January, 2004. In March, 2004, the petitioner suffered severe problem in his right eye resulting in severe pain in his right portion of his head. On 25.03.2004, petitioner visited the Police Hospital, Ara from where he was referred to Sadar Hospital, Ara Eye Department as contained in Annexure-5. Petitioner was then referred to Patna Medical College and Hospital, Patna on 26.03.2004 vide Annexure-6 to the writ application. Petitioner got himself treated in Nalanda Medical College and Hospital, Patna where he remained under treatment till 23.08.2004. But since his condition did not improve, he was referred to Psycho Neurologist at Ranchi where he remained under his treatment till 10.03.2005. Petitioner after recovering submitted his joining in the police line on 11.03.2005 but the same was not accepted although the petitioner had sent leave applications through registered letters informing of his treatment at



different hospitals on 26.03.2004, 26.05.2004, 29.11.2004 and 17.01.2004 as contained in Annexure-8 series. When the writ petitioner reported for duty on 11.03.2005 which was not acceptable, the petitioner moved this Court in C.W.J.C. No. 6985 of 2005 which was disposed of on 22.05.2006 as contained in Annexure-10 with liberty to the petitioner to submit a representation before the respondent, Superintendent of Police, Bhojpur, Ara who would pass an order in accordance with law. Petitioner filed his Medical Certificate and the order of this Court before the respondent, Superintendent of Police, Ara vide Annexure-11 and a representation vide Annexure-12 dated 08.09.2006. Again a letter was written on 23.11.2006 to consider the representation of the petitioner which is Annexure-12/A. Thereafter a departmental proceeding being departmental proceeding no. 79/2006 was initiated against the petitioner and he got knowledge of the proceeding when a letter was served on him to submit written defence. Petitioner appeared before the enquiry officer on 15.02.2007 and filed his written defence denying all charges which is Annexure-13 to the writ application. An enquiry was conducted in departmental proceeding against the petitioner in which the petitioner was found guilty of all the charges by the enquiry officer dated 21.04.2007. Thereafter, the petitioner was issued a show cause against dismissal by the respondent,



Superintendent of Police, Bhojpur, Ara which is Annexure-14. Petitioner submitted a reply as contained in Annexure-14/A that he has already submitted his defence on 15.02.2007. However an order of dismissal was passed on 13.10.2007 for absence of duty without information as contained in Annexure-1 of the writ application which is under challenge. Petitioner preferred statutory appeal before respondent, Deputy Inspector General of Police and when the same was not disposed of petitioner filed a writ application being C.W.J.C. No. 6757 of 2009 which was disposed off by order dated 23.06.2009 to dispose of the appeal within two months from the date of receipt/production of a copy of this order which is contained in Annexure-15. The appellate order was passed on 16.07.2009 as contained in Annexure-2. Again the petitioner approached this Court in C.W.J.C. No. 17764 of 2009 which was disposed off on 05.03.2010 as contained in Annexure-16 to avail the statutory remedy for filing revision/memorial. The revision/memorial of the petitioner was also rejected vide order dated 19.03.2012 as contained in Annexure-3 which is also under challenge.

Learned counsel for the petitioner submits that due procedure of departmental proceeding has not been followed as such, the entire departmental proceeding vitiates on the ground of violation of principles of natural justice. He further submits that no order of



initiation of departmental proceeding was communicated to him and without supplying any documentary evidence in support of charges framed against him and not providing adequate opportunity to defend his case, the order of punishment of dismissal from service was passed. He further submits that the order of punishment has been passed in a most mechanical manner and is not a speaking order. He further submits that the punishment of dismissal from service is a harsh punishment and does not commensurate with the charges framed against him as the charges were of unauthorized absence from duty, which was on account of the petitioner having suffered severe problem in his right eye in March, 2004 and severe pain in the right portion of his head and which was duly informed to his superiors in sequence thereof he has visited Police Hospital, Ara from where he was referred to Sadar Hospital, Ara and P.M.C.H., Patna. Petitioner contends that he was not unauthorizedly absent from duty as on 26.03.2004 the petitioner was referred to P.M.C.H., Patna and was not granted permission by the Sergeant Major for leave. Hence, the petitioner sent leave application through registered post on 26.03.2004 and thereafter he informed the authorities through registered post on 26.05.2004, 29.11.2004 and 17.01.2004. He submits that his joining on 11.03.2005 was not accepted and in pursuance to the show cause notice, petitioner has also given his reply as contained in Annexure-



13. Hence, the ground for dismissal on account of unauthorized absence from duty is not sustainable as the petitioner was not a deserter. He submits that the petitioner reported sick on duty and was examined at the Police Hospital on 25.03.2004 and referred to Sadar Hospital, Ara which, in turn, referred the petitioner to P.M.C.H., Patna on 26.03.2004, his leave application having been refused by the Sergeant Major and instead got himself treated at N.M.C.H., Patna which had better facility where he remained under treatment till 10.03.2005. He submits that the medical certificate in support of the illness had already been furnished by the petitioner and just because he was treated in N.M.C.H., Patna would not be a ground for disbelieving over stayal which is not based on sound reasonings or evidence on record. Hence, the finding of the enquiry officer not based on evidence but on conjectures and surmises cannot be a good ground for imposing punishment. In this regard he relies on the decision in the case of **Mithilesh Kumar Pathak Vs. Union of India & Ors** since reported in 2007 (Supp.) P.L.J.R. 93. He also relies on the decision in the case of **Prem Kumar Vs. The Union of India & Ors.** since reported in 2008 (3) PLJR 202 stating therein that without appreciating the prescription and certificate, the punishment order cannot be sustained.

Learned counsel appearing on behalf of the State,



however, submits that the petitioner had reported sick on 25.03.2004 and he was sent to the Police Hospital, Ara and Sadar Hospital, Ara from where he was referred to P.M.C.H., Patna for better treatment on 26.03.2004 and without obtaining permission from the senior officers got treatment in N.M.C.H., Patna. He was asked to report on duty vide letter dated 11.04.2004 but did not report for duty. On 01.08.2005, he was directed to undergo basic training but the petitioner did not report. After the order passed in C.W.J.C. No. 6985 of 2005, petitioner was informed by letter dated 20.07.2006 to report for duty but the petitioner did not report for duty. Hence, departmental proceeding was initiated in which petitioner appeared between 15.02.2007 to 19.02.2007 and again absented. He submits that the departmental proceeding was conducted in accordance with law. The petitioner had appeared and he was given an opportunity to cross examine the witnesses. He submits that the medical prescription of N.M.C.H., Patna was a treatment of the petitioner as an outdoor patient and the medical certificates and prescriptions of the petitioner has been duly considered by the enquiry officer in the departmental proceeding. Hence, there is no violation of principles of natural justice and the departmental proceeding has been conducted in accordance with law. Hence, the dismissal order passed against the petitioner and affirmed by the appellate and revisional authority calls for no



interference.

Heard learned counsel for the parties.

From the facts as well as the material on record, the file of departmental proceeding no. 79 of 2006 has been called for. From the perusal of the same, it appears that a departmental proceeding was initiated on 20.01.2007 and the petitioner was issued letter dated 05.02.2007 in pursuance to which he had appeared on 15.02.2007 and was given an opportunity to cross examine the witnesses. The petitioner was given the copy of the police doctor who was examined on 17.02.2007 thereafter the petitioner absconded again on 20.02.2007 and the petitioner was served a copy of the enquiry report on 19.09.2007 which is evident from the departmental proceeding file at page-110.

Petitioner was appointed as constable in the year 1999 and was a member of a disciplined force. The petitioner absented himself from 26.03.2004 without any order of leave and did not submit his joining even when he was asked to report on 11.04.2004, 01.08.2005 and 20.07.2006. In the departmental proceeding, the petitioner was given an opportunity of hearing, cross examine the witnesses and the medical prescriptions as contained in Annexure-7 series were also looked into by the Inquiry Officer. The treatment of the petitioner at N.M.C.H., was also as an outdoor patient which has been duly



considered by the Inquiry Officer in the department proceeding. Thus, the departmental proceeding having been conducted in accordance with law, the orders dated 13.10.2007 passed by the Superintendent of Police, Bhojpur as contained in Annexure-1 whereby the petitioner was dismissed from service, the order dated 16.07.2009 passed by the respondent no. 3, the Deputy Inspector General of Police, Shahabad Range, Dehri On Sone (Rohtas) i.e. the appellate authority Annexure-2 confirming the dismissal order and the order dated 14.03.2012 passed by the Director General of Police, respondent no. 2 as contained in annexure 3 upholding the order of dismissal calls no interference.

Writ application is dismissed without any cost. The records of Departmental Proceeding No. 79 of 2006 is being returned to the counsel for the State.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.09.2018
Transmission Date	NA

