

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1842 of 2016

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Nirmala @ Nirmala Devi W/o Late Krishna Singh @ Krishna Prasad Village-
Rekuwa, Nasirpur, P.O.- Khanwar, Via- Nagra, P.S.- Nagra, District- Balia
U.P. Petitioner/s

Versus

1. The State Of Bihar and Ors
 2. Director General of Police, Old Secretariat, Patna
 3. D.I.G. of Police, Military, Police Central Zone, Patna
 4. Commandant B.M.P. 2, Dehri On Sone Respondent/s
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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
Mr. Maruti Kumari, Advocate
For the State : Mr. Lokesh Kumar Singh, AC to AAG 13,

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-01-2019

It is submitted by counsel for the petitioner referring to the averments made in paragraph no. 3 of the Interlocutory Application No. 2272 of 2018 that petitioner Krishna Prasad has an alias, namely Krishna Singh. He prays that Krishna Singh may also be added in the cause title in the description of the petitioner along with Krishna Prasad.

2. Prayer is allowed. Let @ Krishna Singh be added in description of petitioner in the instant proceedings.

3. During pendency of the writ petition the original petitioner has died on 21.02.2018. In view of the said development an application has been filed for substituting the wife namely, Nirmala@ Nirmala Devi, widow of the petitioner as the petitioner in the instant proceedings in place of the original petitioner Krishna Prasad Singh.



4. The prayer is allowed.

5. The name of Nirmala @ Nirmala Devi may be substituted along with details as mentioned in the Interlocutory Application in place of the original petitioner.

6. Interlocutory Application No. 2272 of 2018 stands disposed off.

7. Learned counsel for the petitioner has submitted that the original petitioner has been dismissed from service without affording due opportunity and without complying with the principles of natural justice. The charge memo was issued against the original petitioner alleging that on 13.08.2013 at about 15.43 hours the original petitioner had come to the office in a drunken condition. The allegation is that the original petitioner abused the officers of the Battalion and threatened them of their false implication in cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He has allegedly indulged in violence also, and torn the tracksuit of one constable namely, Birendra Kumar who was trying to pacify the original petitioner. Such allegations of indiscipline have been attributed to the original petitioner who himself was a constable in the Bihar Military Police.

8. In the proceedings as is apparent from the records,



original petitioner has accepted that he was in a drunken condition. Relying upon the provisions contained in Section 85 of the Indian Penal Code he has raised a plea that since he was intoxicated he could not be considered to be in his senses and aware of the misconduct attributed to him. Therefore, a lenient view should be taken and no punishment be awarded to him. In view of the admission of the original petitioner the authorities have proceeded to award the punishment of dismissal to the original petitioner. In light of the original petitioner's admission, this Court would not be inclined to interfere with the order of dismissal as original petitioner was a member of Bihar Military Police, a uniform service. Standard of discipline care required from the original petitioner who was entrusted with maintenance of law and order and the responsibility of protecting the rights of citizens is much higher than many other services.

9. Another aspect of the matter which has been raised by Mr. Prasad learned counsel appearing in support of the writ petitioner is that while issuing the order of punishment the Disciplinary Authority has relied upon the past conduct of the original petitioner. The Disciplinary Authority has taken note of certain findings and punishment awarded to the original



petitioner earlier in his service. Eight major penalties and five minor penalties earlier awarded to the original petitioner has been taken into consideration while awarding the original petitioner punishment of dismissal. It is his submission that the authority could not have relied upon the past conduct, when the same did not constitute the charge. The submissions is based on the decision of the Apex Court in the case of **State of Mysore v. K. Manche Gowda** reported in **AIR 1964 SC 506**. It has also been pointed out with reference to Rule 826 of the Bihar Police Manual that under the manual also the previous record of service of the officer concerned which is not already included in the charge of the proceedings were not to be taken into account for determining the quantum of punishment. This plea has specifically been raised by the original petitioner before the Appellate Authority as well as the Director General of Police in his memorial. The authorities have not considered this plea of the original petitioner and have not recorded any order on this aspect. Past conduct could not have been relied upon as has been shown from Rule 826 of the Bihar Police Manual as well as the law laid down by the Hon'ble Apex Court. However, the same formed the material before the Disciplinary Authority while imposing the punishment against the original petitioner.



Once the same is excluded, facts and circumstances in which the order has been passed would also undergo a change. Such change would be required to be considered while deciding the quantum of punishment, accordingly. This aspect, however, is for the authorities to see as jurisdiction of the writ Court in the matter of quantum of punishment is very limited.

10. Having regard to the aforesaid submissions the writ petition is disposed off. However, the submission of the petitioner's counsel with respect to the quantum of punishment after excluding the past conduct taken into consideration by the Disciplinary Authority may be re-examined. Let the Director General of Police respondent no. 2 take a final decision in this regard within a period of three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

