

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12185 of 2014

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Sumit Kumar @ Sumit Kumar Tiwary son of Mukteshwar Rai of village
Dumraon Dakhintola P.O.- P.S. Dumraon Dist Buxar Petitioner
Versus

1. The Union Of India through its Home Secretary Union of India, N.Delhi
2. The Director General, CRPF CGO Complex, N. Block Lodhi Road, N. Delhi
3. The Inspector General, C.R.P.F., Central Range Gamatinagar, Lucknow U.P.
4. The D.I.G. of Police, CRPF, Lukhnow Range, U.P.
5. The Commandant, CRPF, 215 Batallion, Malaypur, Jamui, Bihar

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ram Hriday Prasad, Advocate Mr. Prashant Kumar Choudhary, Advocate Mrs. Maruti Kumari, Advocate
For the Union of India	:	Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-04-2019

Heard learned counsel for the petitioner as well as
learned counsel for the Union of India.

The petitioner has assailed the dismissal order dated
24.10.2013 (Annexure 4) issued by the Commandant, Batallion
215, Central Reserve Police Force (CRPF), Malaypur, Jamui
(Bihar). He has also sought quashing of the order passed by the
Deputy Inspector General of Police, CRPF, Range Lucknow (Uttar
Pradesh) rejecting petitioner's appeal against order of dismissal.
Order of the Appellate Authority is Annexure 5 to the writ petition
and the same is dated 3.3.2014. The revision of the petitioner was
finally rejected by the office of the Inspector General of Police,



Central Sector, CRPF, Lucknow dated 30.6.2014. The same has been assailed by filing Interlocutory Application No. 1 of 2019.

Admitted facts are that the petitioner while posted as constable at the Battalion Headquarters made an application for 30 days of earned leave on 14.5.2012. Case of the petitioner is that the petitioner's mother had been diagnosed with Cancer and he was required to attend her medical needs. Respondents had in the meantime directed the petitioner to report to the unit headquarters on 21.5.2015. On 24.5.2012 it was discovered that the petitioner has deserted the unit headquarters with effect from 23.5.2012. The petitioner in the circumstances was absent from his duty without any leave for a period of 196 days. He has thereafter been proceeded against on account of having deserted the headquarters and continued absence for such a long period. The issue was considered by the Enquiry Officer. The facts are to be found in the enquiry report dated 3.10.2013 which is Annexure 11 to the I.A. The Enquiry Officer has considered the defence of the petitioner. The petitioner had contended that his mother had been diagnosed with the last stage of cancer and under the facts and circumstances of the case the petitioner had no option but to proceed to attend her medical needs without waiting for sanction of the leave.



Relying upon Annexure 3 to the writ petition learned counsel for the petitioner submits that after leaving the headquarters the petitioner had sent leave application five times. He submits that application for leave during his absence was submitted on 25.5.2012, 27.6.2012, 25.7.2012, 17.8.2012 as well as 3.10.2012. In support of the assertion he has produced xerox copies of the postal receipts.

The Enquiry Officer has considered this issue. Findings of the Enquiry Officer is that the claim of the petitioner regarding illness of his mother for such a long period and the fact that he has submitted leave application as claimed was not reliable since in the enquiry he could not produce the original copy of the medical documents in support of his claim of illness of his mother. Other than copies of the postal receipts, he has also not produced the leave application before the Enquiry Officer. These issues are not denied by learned counsel for the petitioner. Actually, the petitioner had not produced the original copies of the medical documents or the five letters allegedly sent by the petitioner to the authorities for continuance of his leave.

It is specific stand of the respondent authorities that no such leave applications as claimed by the petitioner were received by the authorities. The petitioner has thereafter filed an appeal



against order of Enquiry Officer, since the Enquiry Officer did not accept the submission made by the petitioner and had held the charges of unauthorized absence for 196 days to be proved. The petitioner was awarded punishment of dismissal on account of his unauthorized absence for such a long time.

The appeal of the petitioner has not been placed on record. Records do not reveal that at any point of time the petitioner has produced any original documents in support of his claim for illness of his mother. He has also never produced the five letters allegedly written by him and sent by registered post for continuance of his leave. The findings of the Enquiry Officer therefore cannot be denied or disputed on the basis of the documents submitted by the petitioner.

It is also worthy of consideration that in the counter affidavit filed by the Union of India the authorities have disclosed that prior to this incident of desertion and absence of 196 days earlier also and petitioner was granted punishment of stopping one increment for one year on account of unauthorized absence for 131 days. It is submitted that this fact has also not been disclosed by the petitioner in the instant proceedings and therefore he has not approached the Court with clean hand.



Another submission made by the counsel appearing for the petitioner is that the fact of his being punished on account of unauthorized absence for 131 days earlier could not be considered by the respondent authorities while inflicting punishment on the petitioner in the instant proceedings.

Conduct of the petitioner does not inspire any confidence. In the facts and circumstances of the case fact that petitioner was earlier also punished on account of unauthorized leave cannot be ignored and is a relevant consideration. Said submission of the petitioner is therefore not worthy of consideration in his favour.

Having considered the aforesaid submissions, this Court does not find any reason to interfere with the findings of the authorities. Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2019
Transmission Date	NA

