

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20974 of 2014

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Ranvir Kumar S/o Rajendra Prasad R/o Village - Nayagaon Godhiyasi, P.S. -
Parbatta, District - Khagaria

... .. Petitioner

Versus

1. The State Of Bihar through the Home Secretary, Govt. of Bihar, Patna
2. Director General of Police, Bihar, Patna
3. Deputy Inspector General of Police, Purnia Range
4. Superintendent of Police, Katihar

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad Mr. Ram Yash Singh Ms. Maruti Kumari
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-02-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the respondent State.

2. The petitioner joined the service of the Bihar Police as
a Constable. The appointment was in Katihar District Force on
11.7.2013. Immediately after his appointment the petitioner was
found to be absent in between 30.7.2013 to 14.8.2013 i.e. period of
15 days. Again the petitioner was absent from duty in between
25.8.2013 to 125.10.2013 i.e. 50 days. The total period of alleged
unauthorised absence therefore is 65 days. Another allegation that
was levelled against the petitioner in charge memo dated
23.10.2013 was that while obtaining appointment the petitioner



had suppressed the fact of his implication in a criminal proceeding arising out of Parbatta PS Case No. 90 of 2012 on 28.5.2012 for the alleged offence under Sections 147, 148, 149, 323, 324 and 379 of the IPC

3. The petitioner had submitted his response to the charges. The plea was raised that on 11.8.2013 the petitioner got submitted an application for continuing on leave till 15.10.2013. The application was admittedly submitted on 11.8.2013 by brother of the petitioner. Regarding the other allegation of his implication in the said police case the petitioner has placed before the authorities the circumstances of his implication in the case. He has pleaded that in a marriage procession which had come in his family some lewd comments were being passed by certain members of *Barat*. On the spur of moment some scuffle ensued. Occurrence took place when petitioner was only 22 years old. Thereafter due to intervention of the family members the issue was pacified and the petitioner was unaware that the proceedings were still continuing. Under the bonafide belief that the issue had finally been pacified between the two parties, who by then (after the marriage) had become family members he did not consider it necessary to disclose the fact of lodging of the case.



4. The said belief of the petitioner was correct as is evident from Annexure 5, which has come into existence much later to the representation being filed by the petitioner. On 28.6.2014 the proceedings arising out of Parbatta PS Case No. 90 of 2012/GR Case No. 1041 of 2012 have finally been closed in light of the settlement arrived at between the parties in Mega Lok Adalat held at Civil Court, Khagaria.

5. It is further submitted by the petitioner's Counsel that having regard to the age of the petitioner at the time of occurrence and the nature of the offence leading to lodging of Parbatta PS Case No. 90 of 2012 the authorities should have considered that the issue was very trivial and the same should not have been made basis of visiting the petitioner with such severe consequences as dismissal, which has been done by the impugned punishment dated 23.2.2014.

6. Same submission is made with respect to other allegation of unauthorised absence for a period of 65 days. The petitioner has submitted that since leave application on medical ground had already been submitted on 11.3.2013, the authorities having regard to the medical exigency and the fact that the period of absence was only 65 days should have taken a lenient view of the matter and should not have passed punishment of dismissal.



7. In support of both the submissions Counsel for the petitioner has relied upon certain judgments. Submission is that period of 65 days unauthorised absence cannot result in dismissal of the petitioner and that the order of dismissal insofar as the punishment is concerned, is disproportionate to the alleged occurrence for which the proceedings have been conducted. He relies upon a decision of this Court in the case of *Nagendra Upadhyay vs. State of Bihar* reported in *1996(1) PLJR 129*. In that case this Court had considered the fact that dismissal for unauthorised absence for a period of 62 days was disproportionate and violative of Article 14 of the Constitution of India since others in the Police Department who had absented for longer period, i.e. 195 days, had been visited with only one black mark and that extreme punishment of dismissal was therefore not found in accordance with law and the Court had set aside the order of punishment and left it to the authorities to decide on the quantum of punishment maintaining parity in this regard and considering the gravity of absence for 62 days.

8. The petitioner's case is squarely covered by the said judgment. The period of absence is much less than 195 days and three days more than the case relied upon by the petitioner. The authorities therefore were required to consider grant of lesser



punishment to the petitioner in view of the law relied upon by the petitioner.

9. In respect of other allegations regarding non disclosure of pendency of the criminal proceeding arising out of Parbatta PS Case No. 90 of 2012 the petitioner has in support of his submission recorded hereinabove relied upon a decision of the Apex Court in the case of ***Commissioner of Police & ors Vs. Sandeep Kumar*** reported in ***2011(2) PLJR 196***. Having regard to similar circumstances where the applicant for service in a Police Force had suppressed his implication in a criminal case, the Apex Court had refused to interfere with the order passed by the High Court allowing the petitioner's writ petition against the order passed by the Central Administrative Tribunal which had refused to exercise jurisdiction in favour of the petitioner and dismissed his application on 13.2.2004.

10. Dealing at length with the law in this regard and how the authorities should proceed in the matter when implication of the applicant in criminal proceedings was suppressed and when the nature of the offence was trivial, as in the instant case, has been laid down by the apex court. Another mitigating circumstances which is required to be considered is that the entire proceedings arising out of Parbatta PS Case No. 90 of 2012 have finally been



closed as a result of order in the Mega Lok Adalat (Annexure 5), which has been taken note of hereinabove. In the circumstances, the petitioner is entitled to more lenient view on the said allegation of suppression of the fact of his implication in a criminal proceeding. In this connection, petitioner's reliance on the case of ***Commissioner of Police & others (supra)*** appears to be wholly justified. This Court would reproduce certain relevant portion of the said judgment which have been relied upon by the petitioner's Counsel. Paragraph nos. 12, 14, 18 and 20 of the said judgment reads as under:-

“12. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

14. The modern approach should be to reform a person instead of branding him as a criminal all his life.

18. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.



20. For the reasons above given, this Appeal has no force and it is dismissed. No costs.

11. In view of foregoing conclusions this Court would set aside the order of punishment dated 23.2.2014 dismissing the petitioner from service and the order of the DIG dated 27.6.2014 as the punishment of Dismissal is expressive, and direct that the respondents should consider quantum of punishment having regard to the observations made in favour of the petitioner on the basis of law in this regard as has been noticed hereinabove. Final order in this regard should be passed by the Disciplinary Authority within a period of three months from the date of receipt/production of a copy of this order.

12. The writ petition stands allowed.

(Madhuresh Prasad, J.)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.02.2019
Transmission Date	N/A

