

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 6270 of 2005

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Birendra Jha, S/o late Anant Jha, Resident of Village – Chhoti Parwatta, PS –
Ismailpur, District - Bhagalpur

... .. Petitioner/s

Versus

- 1 The State of Bihar through the Director General of Police, Old Secretariat,
Patna
- 2 The Inspector General, Darbhanga Division, Darbhanga
- 3 The Deputy Inspector General of Police, Koshi Area, Saharsa
- 4 The Superintendent of Police, Saharsa
- 5 The Conducting Officer (Parichari Prawar) Police Line, Saharsa

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Ajit Kr Ojha Ms Shweta, Advocates
For the Respondent/s	:	Ms Binita Singh, SC XXVIII Mr Vivek Anand Amritesh, AC to SC XXVIII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 19-07-2019

Heard learned counsel for the petitioner as well as
learned counsel for the respondent-State.

2 Writ petition has been filed challenging the order of
the Appellate Authority dated 30.11.2002 whereby the Appellate
Authority has rejected the petitioner's appeal. The appeal was
preferred against the order 14.06.2001 awarding the punishment of
termination to the petitioner. The Superintendent of Police,
Saharsa has awarded the punishment after issuing a charge memo
against the petitioner on 21.05.2001 after giving due opportunity



to the petitioner in the departmental proceedings bearing Case No 13 of 1995.

3 The averments made in the writ petition make it abundantly clear that because the petitioner did not present himself in the enquiry, proceedings were conducted ex parte. Petitioner, however, has alleged that the proceedings were conducted in violation of the principles of natural justice since two witnesses, who were sought to be examined, did not present themselves before the Enquiry Officer. The Conducting Officer has taken into consideration the remarks and notings recorded on Card Register by the aforesaid witnesses on the date of inspection when the petitioner was found absent from duty. It is submitted by the learned counsel appearing for the petitioner that Conducting Officer was wrong in placing reliance on noting on Card Register when the author of the Register was not examined during course of the proceedings.

4 The aforesaid submissions are to be viewed in the background of the allegations for which the petitioner was proceeded. Being a Constable in the Bihar Police, he had taken a leave of 10 days. In spite of presenting himself after availing the 10 days leave, he has remained absent from 05.11.1994 to 15.01.1995. The pleadings on record in the writ petition itself



shows that when he returned after availing the leave on 15.01.1995, prior to his returning, he has been placed under suspension. Upon his return, proceedings were conducted against him. During the course of the proceedings also, he has remained absent from duty. In the circumstances, on account of his continued long absence for more than one and half years, on basis of averments made in the writ petition and considering the submissions made before the Appellate authority recorded in Annxure 4, it is more than obvious that the petitioner has chosen not to participate in the proceedings. He has raised a plea that he was unwell. There is nothing on record to suggest that he had intimated the authorities regarding his illness or had sought any time in the proceedings before the Enquiry Officer.

5 Having regard to such conduct of a Member of the Police Force, the Disciplinary Authority (Superintendent of Police) has awarded the petitioner punishment of termination on 14.06.2001.

6 Petitioner availed the remedy of appeal but the same was belated. Taking note of the belated filing of the appeal, the Appellate Authority has still proceeded to consider the same on merits and rejected the appeal by order dated 30.11.2002. The order passed by the Appellate Authority only is under challenge in



the instant proceedings. The punishment of termination under the orders of Superintendent of Police dated 14.06.2001 has not been challenged.

7 Since, there is nothing on record to suggest that the petitioner made any endeavours to seek adjournment in the proceedings before the Enquiry Officer and it is admitted that he has not participated in the proceedings, the course adopted by the Enquiry Officer to proceed ex parte appears to be fully justified. It is trite law that when a party refuses to avail the opportunity of natural justice and hearing, he cannot be permitted to take a plea regarding non-compliance of principles of natural justice by the Authority. When the delinquent fails to avail of the opportunity and chooses not to participate in the proceedings, the law presumes waiver of natural justice. Judgment of the Apex Court in the case of Board of Director, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi, (2008) 11 Supreme Court Cases 502 squarely covers the circumstance which has arisen in the instant case.

8 The plea raised by the petitioner regarding non-compliance of principles of natural justice is not tenable in view of the settled legal position. Otherwise also, this Court does not find



any infirmity in the order passed by the Appellate Authority dated 30.11.2002.

9 Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2019
Transmission Date	NA

