

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4780 of 2016

Subodh Kumar son of Sri Krishanandan Singh of Village Naudiha Saidpur
P.O. Rahimpur P.S. Sonpur, District- Saran.

... .. Petitioner

Versus

1. The Union Of India through the Secretary Home Department Union of India, N.Delhi.
2. The D.G. of Police SSB, CGO Complex North Block, Lodhi road, New Delhi.
3. The I.G. of Police, Frontier Hqurs SSB, Patna.
4. The D.I.G. Sector Hqurs, SSB, Muzaffarpur.
5. The Commandant SSB, 20th Bn. Sitamarhi.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Sangiv Kumar with Mr. Gajendra Kumar Singh, Advocates.
For the U.O.I.	:	Mr.S.D Sanjay A. S.G With Mr. Ravinder Kumar Sharma C.G.C.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 14-11-2019

Heard learned counsel for the petitioner and
learned counsel for Union of India.

2. The petitioner was serving as a 'Constable GD' in the Respondent- *Seema Sashastra Bal* (for brevity 'SSB'). He availed 45 days leave from 16.05.2011 to 29.06.2011. Pursuant to the said leave, the petitioner did not resume his duties. It is, under these circumstances, that the petitioner has been visited with the order of dismissal which has been impugned in the instant proceedings. The



order of dismissal was dated 19.04.2012 (Annexure-5 to the writ petition).

3. The brief facts leading to the petitioner's dismissal have been taken note of hereinabove. The petitioner having availed the leave neither resumed to his duties nor there is anything on record to show that the petitioner has sent any intimation to the Authorities as to why he has been prevented from resuming his duties.

4. The Authorities have placed on record their counter affidavit. The brief facts which have been narrated by the Authorities are that on account of non-resuming of his duties, he was declared deserter after conducting a proper Court of Enquiry under the provisions of SSB Act and the Rules, 2009. Thereafter, the notices, proposing to terminate his services, were issued to the petitioner. The petitioner has also been served with rejoining notices on 04.07.2011 and 15.07.2011 at his permanent own address mentioned in the Service Book. The specific averments made in the counter affidavit has neither been disputed or



controverted by filing any rejoinder to the same by the petitioner till date. It is, in these circumstances, wilful absence from the duties from the Para Military Force for a period of 158 days had to be considered by the Authorities. The circumstances did not allow conduct of a proper proceedings as the petitioner was neither appearing pursuant to the notices of rejoining or pursuant to the show cause proposing to terminate his service, the Authorities have, thus, proceeded to issue the order of dismissal *ex parte*.

5. The counsel for the petitioner submits that the order is unsustainable on two counts. Firstly, that it was not pursuant to a proceedings and copy of Enquiry Report was not served on the petitioner. In this connection, he places reliance on the leading case in the case of ***Managing Director, ECIL, Hyderabad etc. v. B. Karunakar etc.*** The same is reported in ***AIR 1994 SC 1974***. The other submissions of the petitioner's counsel is that the punishment of dismissal is grossly disproportionate to the allegation. It is, in this



connection, that he has placed reliance on a decision of the Apex Court in the case of ***Union of India and others v. Giriraj Sharma***. The said judgment is reported in ***AIR 1994 SC 215***.

6. The learned Additional Solicitor General appearing on behalf of the Respondent- Union of India submits that reliance placed on the said two judgments is misplaced by the petitioner as in the instant case the Authorities have issued the order of dismissal, in a circumstance, wherein, they have found that the conduct of normal proceedings was not possible on account of petitioner's non-cooperation, which, in view of the relevant facts stated hereinabove, appears to be correct. It is, in these circumstances, the reliance placed on the judgment in the case of ***Managing Director, ECIL, Hyderabad*** (supra) would not apply, in the facts of the instant case, when the petitioner did not appear pursuant to the notices and as such Enquiry was impossible. The other judgment relied upon by the petitioner's counsel is also distinguishable on facts. The period of overstay in



that case was twelve (12) days. Thereafter, the member of the Force had resumed his duties. Further, the Apex Court has taken note of the fact that during the leave, the absentee had sent a Telegram for extension of leave. Such mitigating circumstances available to the respondent before the Apex Court in that case are not available in the instant case. Therefore, the reliance placed on the said judgment, in the opinion of this Court, is also not permissible.

7. In view of the fact that petitioner has chosen not to participate in the enquiry, or at any stage after repeated notices/communications, it does not lie in his mouth to say that he was not served with a copy of enquiry report or that punishment is disproportionate.

8. As per decision of the Apex Court in the case of **Board of Director, Himachal Pradesh Transport Corporation vs. K.C.Rahi** reported in **(2008)11 SCC 502**, the petitioner would be deemed to have waived the requirement of natural justice and estopped from alleging its violation.



9. The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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