

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5347 of 2016

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Khurshid Alam son of Md. Shabir Ansari, Resident of village- Akil Tola, P.O. Kasdeora Bangra, P.S. Maharajganj, District Siwan, Pin Code:- 841238.

... .. Petitioner/s

Versus

1. The Union Of India through Ministry of Home Affairs, North Block Central Secretariat, New Delhi-110001.
2. The Directorate General, Central Reserve Police Force (CRPF), Block No.1, C.G.O. Complex, Lodhi Road, New Delhi -110003.
3. Inspector General (IG), Central Range, Central Reserve Police Force (CRPF), Gomati Nagar, Lucknow, Uttar Pradesh (UP).
4. The Deputy Inspector General (DIG), Central Reserve Police Force (CRPF), Amethi Range, Lucknow, Uttar Pradesh (UP).
5. The Deputy Inspector General (DIG), Central Reserve Police Force (CRPF), Group Kendra, Amethi Range, Lucknow, Uttar Pradesh (UP).
6. The Deputy Inspector General (DIG), Central Reserve Police Force (CRPF), Group Kendra, Muzaffarpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bipin Bihari Singh, Advocate
For the Respondent/s	:	Mr.S.D Sanjay A.S.G. with Mr. Alok Kumar Jha (C.G.C.)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-11-2019

Heard learned counsel for the petitioner and learned Additional Solicitor General representing the Union of India.

2. The petitioner has sought quashing of order dated 24.03.2015 passed by Company Commandant of 214 Battalion of the C.R.P.F. whereby he has been inflicted with punishment of removal from service.



3. The factual background is that on account of illness of his mother, the petitioner had abstained from duties by way of availing leave from 23.08. 2013 to 29.08.2013. Having availed such leave, he did not submit his joining, instead, he made an application for extending his leave for 45 days on account of his suffering with the disease of Hepatitis -B. The Authorities have repeatedly written to the petitioner to come and join his services. In the meantime, they have also vide letter dated 06.11.2013 directed him to return in the Unit with his Medical documents so that he may be referred to the composite Hospital or in C.R P.F. Unit Hospital, if he is actually ill. Even the said communications sent by the Respondent Authorities did yield any result. It is in this circumstance that a Court of Enquiry was issued, when even warrants issued by the police could not be effected and the petitioner could not be traced.

4. Pursuant to the Court of Enquiry, the Authorities, in view of the Enquiry Report, dated 18.04.2014, declared the petitioner deserter from



the Force. The order was also communicated to his available home address in the records of the Respondent-Organization as per Departmental Rules.

5. Subsequently, copy of charges was framed against the petitioner and was sent to his home address. Besides the copy of charge memo which was sent on 03.06.2014, the Enquiry Officer also issued letters dated 18.6.2014 and 07.07.2014 inviting the petitioner's response. There is no response of the petitioner to any of these communications which were sent to him. It was in these circumstances that the Authorities proceeded with the Enquiry *ex parte* and awarded the punishment of removal from service to the petitioner w.e.f. 24.03.2015. By then the petitioner had over stayed for 572 days after availing leave. The petitioner, thereafter, has approached this Court assailing the findings of the Enquiry Officer and the entire proceedings leading to his removal.

6. It is apparent that in spite of repeated opportunity, petitioner has chosen not to avail the



same. Having done so, this Court would observe that he is estopped from alleging that he was denied opportunity to examine/cross-examine witnesses. In the facts and circumstances, petitioner by his non-participation in the proceedings have allowed waiver of natural justice. In this connection, this Court would refer to 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**. In the said case also the delinquent, in spite of knowledge regarding proceedings had abstained from the same. The Apex Court has, thus, held that natural justice would be deemed to have been waived and delinquent estopped from raising issue of natural justice violation.

7.The petitioner's case is that he was not granted adequate opportunity in the Enquiry and the witness were neither examined in his presence nor he was afforded any opportunity to cross-examine the witnesses. The plea raised by the petitioner regarding such opportunity not being



granted, viewed in the background of his non-response to the various communications including the charge memo and judgment of the Apex Court in the case of **Board of Director, Himachal Pradesh Transport Corporation** (supra), has no legs to stand.

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

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.11.2019
Transmission Date	N/A

