

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.465 of 2015

=====

Prince Kumar Singh Son of Sri Vijay Bahadur Singh, Resident of Village +
P.O.- Dihra, P.S. Obra, District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Inspector General of Police, Railway Bihar, Patna
3. The Superintendent of Police, Railways, Katihar
4. The District Commandant, Bihar Sone Guard, Aurangabad

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15564 of 2012

=====

Prince Kumar Singh, Son of Sri Vijay Bahadur Singh Resident of Village +
P.O.- Dihra, P.S. Obra, District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Home (Police) Department, Bihar, Patna
3. The Director General cum Commanding General, Bihar Home Guard, Bihar, Patna
4. The Commandant, Bishesh Gan, Bihar Home Guard, Bihta, Patna

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 465 of 2015)

For the Petitioner : Mr.Rajeev Kumar Singh
Mr. Mukesh Kumar Singh
Mr. Sitaram Prasad

For the Respondent/s : Mr.Saroj Sharma, AC to AAG 3

(In Civil Writ Jurisdiction Case No. 15564 of 2012)

For the Petitioner/s : Mr. Rajeev Kumar Singh
Ms. Nirmala Kumari

For the Respondent/s : Mr.Rakeshj Srivastava, AC to GP 15

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-02-2019

The two writ petitions have been filed by the petitioner
for quashing of two different orders; one is order dated 10.3.2011



bearing No. 118 issued by the Director General -cum- Commandant General, Bihar Home Guard, the same is subject matter of CWJC No. 15564 of 2012.

2. Order dated 9.1.2012 bearing No. 68 issued under the signature of Railway Police Superintendent, Katihar, is assailed in the proceedings arising out of CWJC No. 465 of 2015.

3. The two writ petitions are connected on account of the fact that the order dated 9.1.2012, which has been impugned in CWJC No. 465 of 2015, is based on the petitioner's discharge from Home Guard services under the order dated 10.3.2011 which has been impugned in CWJC No. 15564 of 2012.

4. This Court would first proceed to deal with the order dated 10.3.2011 issued by the Director General -cum- Commandant General, Bihar Home Guard, in purported exercise of power under Rule 7(4) of the Bihar Home Guard Rules 1953. The petitioner has been discharged from his services under the Home Guard by the said order along with nine other persons. One such person namely Kaushal Kumar Singh had challenged his discharge under the said order by filing a writ petition. His writ petition bearing CWJC No. 574 of 2017 was allowed under order dated 21.7.2017 by a coordinate Bench of this Court. Issuance of the order of discharge dated 10.3.2011 was found to be illegal for the



reason that Rule 7 does not contemplate issuance of discharge in the facts and circumstances and in the manner in which the petitioner has been discharged from the services. In the said proceeding this Court has held that if the authorities were of the opinion that the petitioner was to be discharged then they have to resort to the procedure prescribed under Rule 16 of the Bihar Home Guard Rules. The relevant extract of the judgment in the case of Kaushal Kumar Singh is being reproduced hereunder:-

“As I have already observed that there is no dispute that no formal proceedings was conducted for the alleged misconduct rather it is by asking simple show cause vide Annexures-1 and 1A and in consideration of the same present at Annexure-2 that the order of discharge under Rule 7(iv) of ‘the Home Guard Rules’ has been passed.

It is now to be seen whether or not the order of discharge would sustain the legal prescriptions.

Rule 7 of ‘the Home Guards Rules’ deals with the issue of discharge and at (iv) enables the State Government, the Inspector General or any other authority on whom the power is delegated, to discharge a home guard for any other special reason to be recorded in writing. Rule 7(iv) of ‘the rules’ vests jurisdiction in the competent authority to discharge a Home Guard in situations other than physical fitness, attainment of age of 41 or on his own request. It is thus a special power vested in the authority competent to do so to discharge. If it is a case of a discharge simplicitor for the reasons present in rule 7, may be the process of issuance of show cause before the purported action is taken, would be sufficient but then rule 7(iv) cannot be read in isolation in a case where the foundation for discharge is resting on an alleged misconduct. It is not in dispute that the



order of discharge is resting on act of alleged misconduct by the petitioner and some others.

For the purpose this Court would refer to the prescription provided under Rule 16 of 'the Home Guards Rules' which relates to imposition of punishment, to spell out the distinctive powers.

Rule 16(2) very specifically provides that where an authority intends to impose a penalty of suspension, black mark, stoppage of increment, reduction in rank, removal or dismissal, the proceedings would be regulated by the general orders of the State Government issued from time to time. Obviously the reference is to 'the disciplinary rules' so framed in this regard.

In my opinion the special power so vested in the authority competent to discharge a Home guard under Rule 7(iv) is in circumstances which calls for special reason and which has to be a reason other than those present under Rule 16. Where the nature of the order amounts to a dismissal or removal from duty for an act of alleged misconduct, certainly the matter would travel out of the provisions of Rule 7 and sail into the provisions of Rule 16 where the authority competent to discharge a Home guard would be legally and statutorily bound to follow the procedure provided under 'the disciplinary rules' which finds recognition under Rule 16(2)(iii).

The short cut route thus adopted by the Commandant to discharge the petitioner from service by forfeiting his right to defend himself against the alleged act of misconduct, is a denial of reasonable opportunity to the person concerned, violative of the principles of natural justice and is de hors the principles underlying the service rules.

For the reasons and discussions aforementioned, the order of discharge passed against the petitioner as found in the order dated 16.3.2010 passed by the Commander, Bihar Special Battalion Bihar Home guards impugned at Annexure-3 cannot be upheld as it is apparently in teeth of the provisions under Rule 16 of 'the Rules' and is accordingly quashed and set aside."



5. The petitioner has been discharged in compliance of the same order dated 10.3.2011 in the same manner as the said Kaushal Kumar Singh. Since this Court has already held that the order of discharge could not have been issued without complying with the principles of natural justice and without resorting to procedure prescribed under Rule 16 of the Bihar Home Guard Rules, therefore, this Court is left with no option but to allow the prayer of the petitioner for quashing the order of discharge dated 10.3.2011.

6. To this, the Counsel for the State submits that against the order passed in the case of Kaushal Kumar Singh the State has preferred Letters Patent Appeal. Such submission has been made repeatedly in course of this proceeding and in spite of several adjournments granted to the respondent State since 25.4.2018, till date the State is not in a position to inform the Court what has been the fate of the alleged Letters Patent Appeal filed against the order passed in CWJC No. 574 of 2017 dated 21.7.2017. Merely for the fact that a LPA has been preferred cannot be a ground for this Court to ignore the judgment of this Court in CWJC No. 574 of 2017. Till date the State has not produced any order passed in the alleged LPA proceeding which would come in the way of



granting the same relief to the petitioner which has been granted to Kaushal Kumar Singh. This Court would, therefore, quash the order dated 10.3.2011 in so far as the petitioner has been discharged.

7. As regards the second case, it is submitted by Counsel for the petitioner that the order of dismissal, under order dated 9.1.2012, dismissing the petitioner from his services as Constable is based on an allegation that though he had been discharged from his services in the Home Guard, he has suppressed the said fact and obtained employment as Constable by availing the benefit of the category of Home Guard candidates. The petitioner's Counsel has pointed out from the order dated 9.1.2012 that for alleged misrepresentation and suppression regarding his discharge from the Home Guard services, he has been dismissed.

8. On going through the pleadings it is clear that the petitioner had made his application pursuant to an advertisement issued in the year 2009. The application of the petitioner has been enclosed in the supplementary counter affidavit filed on behalf of respondent No. 3 at Annexure 'B'. Counsel for the State has drawn attention of the Court towards the misrepresentation/suppression alleged. Referring to the petitioner's application, it is submitted that in the column meant for disclosing whether he was a Home



Guard or not, he has filled his form by saying “yes”. He has also given his Home Guard No. 181664. It is submitted that in view of the petitioner’s discharge from the Home Guard services the disclosure made in the application form is not correct and amounts to suppression and misrepresentation.

9. This Court would find that the application form, which has been brought on record by the respondents, is dated 28.9.2010. The order of discharge is dated 10.3.2011. Clearly the order of discharge is much later to the submission of the application form by the petitioner. The submission of the Counsel for the State that claiming to be a Home Guard in his application form dated 28.9.2010 is a misrepresentation or suppression, is clearly misconceived, since the petitioner was discharged on 10.3.2011 much after he had filled his application form on 28.9.2010.

10. Apart from the aforesaid facts, another development during pendency of the instant proceeding is that issuance of the discharge order by resorting to Rule 7 of the Bihar Home Guard Rules has already been found to be illegal in the proceedings arising out of CWJC No. 574 of 2017 (in the case of Kaushal Kumar Singh). Relying upon the said judgment, the order of discharge, in so far as the petitioner is concerned, is also quashed.



In view of the said development there is no order of discharge so as to invalidate the petitioner's claim and the very basis of the dismissal order dated 9.1.2012 does not exists.

11. In view of the aforesaid facts and circumstances, the order dated 9.1.2012 is also unsustainable, both on facts as well as on law, and is hereby quashed.

12. Both the writ applications stand allowed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.02.2019
Transmission Date	N/A

