

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.275 of 2019

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1. Neeraj Kumar S/o-Sri Naresh Sharma Resident of Village-Karouta, P.s.-Parasbigha, District-Jehanabad.
 2. Randhir Kumar S/o-Sri Dinesh Singh Resident of Village-Parn Bigha, P.S.-Hulasgang, District-Jehanabad.
 3. Sivjee Singh S/o-Jagdish Singh Resident of Village-Jagdishpur, P.S.-Ghoshi, District-Jehanabad.
 4. Mantu Kumar S/o-Sri Ajay Prasad, Resident of Village-Dumri, P.S.-Ghoshi, District-Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Home secretary, Government of Bihar, Patna.
2. The Principal Home Secretary, Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Inspector General Cum Head Commandant, Home Department, General Police and Fire Brigade Biuro Party, Patna Bihar.
5. The Commandant, Special Battalion, Bihar Home Guard Bihta, Patna. Bihar.
6. The Deputy Commandant, Special Battalion, Bihar Home Guard Bihta, Patna, Bihar.
7. The District Commandant Bihar Home Guard Police, Patna Bihar.
8. The District Commandant, Bihar Home Guard Police, Jehanabad, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Subodh Kumar Jha Mr. Awadhesh Kumar Singh
For the State	:	Mr.Md. Haroon Quareshi, AC to SC 1

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 27-06-2019 Heard counsel for the petitioners and counsel for the respondents-State.

Petitioners have sought quashing the order dated 10.03.2011 passed by the Inspector General-cum-Head Commandant, Home Department as well as order dated 31.05.2012 issued by



respondent no.2 rejecting the appeal against the said order. Order passed by respondent no.4 is in purported exercise of power under rule 7(4) of Bihar Home Guard Rule, 1953. The power under rule 7(4) of the Rules provides for discharge under certain specific circumstances.

The order dated 10.03.2011 however, has been issued on the basis of certain allegations and by way of punishment. The order dated 10.03.2011 is the same order whereby others namely, Kaushal Kumar Singh as well as Prince Kumar Singh were also discharged from service on the basis of certain charges and by way of punishment. Writ petition of Kaushal Kumar Singh was allowed in the proceedings arising out of CWJC no. 574/2017 by order dated 21.07.2017 taking note of the fact that rule does not contemplates discharge in the circumstance and in the manner in which petitioners have been discharged from services by way of punishment. This court in case of Kaushal Kumar Singh held that if 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 Bihar Home Guard Rules. The same has not been done. 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 Annexure 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 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 when 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”.

The said order, in the meantime, has also been affirmed by Division Bench of this court in a proceedings arising out of LPA no. 520/2018. Issue stands concluded even by the Division Bench that the authority could not have resorted to provision of discharge under Rule 7. In view of the fact that the petitioners were being removed on account of certain charges and by way of punishment, order of discharge could not have been issued without complying with



principles of natural justice and without resorting to principle prescribed under Rule 16 of the Bihar Home Guards Rules.

In the instant case also respondents have resorted to powers under Rule 7(4) of the Bihar Homeguard Rules, 1953 which could not have been done since petitioners were being removed on basis of allegations and by way of punishment.

In view of the aforesaid circumstance, this court is left with no option but to allow writ petition. Order dated 10.03.2011 passed by the Inspector General-cum- Head Commandant, Home Department is quashed. The order dated 31.05.2012 affirming the illegal order must also collapse and the same is also quashed.

Writ petition is allowed.

(Madhuresh Prasad, J)

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