

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11931 of 2011

Uma Shankar Rai son of Sri Ram Bilash Rai Post Gotapa Via Takiya Bazar
Sasaram P.S. Agerer, Distt. Rohtas, Bihar

... .. Petitioner

Versus

1. The State Of Bihar through Director General of Police, Bihar, Patna
2. The Additional Director General Of Police B.M.P. Bihar, Patna
3. The Inspector Generals Of Police B.M.P. Bihar, Patna
4. The Deputy Inspector General Of Police B.M.P. Central Zone Bihar, Patna
5. The Comandant B.M.P. 10 ,Bihar, Patna
6. The Commandant B.M.P. 10 Darbhanga Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir Ms. Shruti Sinha
For the Respondent/s	:	Mr. Sushil Kumr Singh, AC to AAG 10

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 14-10-2019

The petitioner has challenged the punishment dated 31.1.2007 issued by Commandant of the Bihar Military Police as well as the order dated 22.1.2009 whereby petitioner's appeal against the punishment has been rejected.

The petitioner was proceeded against on account of his unauthorised absence between 14.11.2003 to 9.12.2005 being a period of 756 days. In the proceedings before the Enquiry Officer the witnesses were examined and enquiry report was submitted finding the charges to be true. The findings of the Enquiry Officer has been accepted by the disciplinary authority i.e. Commandant BMP 10



Patna. The commandant has thereafter issued a punishment order finding the petitioner to be absent unauthorisedly for entire period. Adjustment against leave without pay available to the petitioner has also been directed and the period has been treated as break in service. One annual increment of the petitioner has been withheld for two years in the order of punishment.

Counsel for the petitioner submits that the petitioner was suffering with mental illness. He was not in his proper sense. Considering this aspect of the matter earlier three proceedings which had been initiated against the petitioner in the year 2003 resulted in petitioner's exoneration. The relevant factor of mental illness of the petitioner duly certified by a certificate issued by PMCH (Annexure 10) has not been considered by the authorities conducting the proceedings against the petitioner. The commandant proceeded with bias and therefore the punishment order dated 31.1.2007 is unsustainable in the eyes of law.

The submission of the petitioner based on the pleadings presupposes and accepts absence of 756 days. The absence is sought to be justified by alleging mental illness of the petitioner based on medical certificate (Annexure 10).

In the enquiry, the petitioner has appeared before the Enquiry Officer at the time of examination of witnesses. He has not availed of opportunity to cross examine the witness and plea of mental illness has been raised for the first time before the Appellate Authority.



It is in these facts and circumstances based on submission of the rival parties that the sustainability of the punishment has to be examined.

The medical certificate which forms sheet-anchor of the petitioner's defence is of till December 2003. The period of petitioner's absence is from 14.11.2003 to 9.12.2005. Nothing has been brought before the authorities or in the instant proceeding to show that the petitioner continued to suffer from mental condition after December 2003. The certificate at best certifies the petitioner being on some medication for five months in the year 2003 i.e. between June 2003 to 20.12.2003. The absence of 756 days therefore cannot be defended on the basis of Annexure 10 (medical certificate).

The other aspect of the matter is that the petitioner has chosen not to cross examine the witnesses in the proceeding. The law in this regard is clear. The Apex Court in the case of ***Board of Director, Himachal Pradesh Transport Corporation vs. K.C.Rahi***, reported in ***(2008) 11 SCC 502*** has clearly held that when the delinquent chooses not to avail of the opportunity granted to him there is deemed waiver of principles of natural justice. In such circumstances the plea of natural justice cannot be applied as a straight jacket formula.

The order issued by the disciplinary authority dated 31.1.2007 therefore in the opinion of this court does not require any interference. The order of the Appellate Authority dated 22.1.2009 is reaffirmation of the order issued by Commandant BMP 10 dated 31.1.2007, legality of which has been affirmed by this Court in the



instant proceeding. The order of the Appellate Authority also does not warrant interference.

The writ petition is dismissed.

(Madhuresh Prasad, J.)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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