

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15395 of 2011

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DHIRENDRA KUMAR S/O Late Hardeo Prasad Singh R/O Village- Khilbat,
P.S- Bidupur, District- Vaishali At Present Kachauri Gali, P.S.- Chowk Patna
City, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police , Bihar, Patna
3. The Inspector General Of Police Assistant Inspection Bihar, Patna
4. The Deputy Inspector General Of Police, Magadh Range, Gaya
5. The Superintendent Of Police, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Udit Nr. Singh
For the Respondent/s : Mr.Anuj Kumar, AC to SC 12

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 02-09-2019 Heard learned counsel for the petitioner and learned
counsel for the respondents.

Counsel for the petitioner submits that on account of
his illness, petitioner has been prevented from joining the
transferred place i.e. Pretshila Police Camp. In support of his
assertion, he has annexed one certificate issued by the Medical
Officer, Referral Hospital, Mohania. The same certifies that
petitioner was under treatment for the period 15.09.1998 to
04.12.1998 i.e. period of less than three months.

Petitioner however remained absent from 12.09.1998
till 25.07.2001. He submits that authority has not considered just



and valid reason that he was absent on account of his illness.

Counsel for the State submits that long lapse of absence, not intimating to the authority or no leave application on the ground of his medical condition show that petitioner is not a disciplined person. Petitioner being member of police force is expected to maintain a high level discipline and sense of duty.

Petitioner has absented himself for a period of about three years and even before Enquiry Officer he has chosen not to participate in the proceedings.

In view of rival submissions, this court would observe that since the petitioner has admittedly absented for about three years and even if medical certificate submitted by him is relied upon, the same only supports illness of three months. There is nothing on record to show that petitioner's absence was in any manner genuine. Apart from that he has chosen not to participate in the enquiry.

Conduct of the petitioner does not inspire confidence so as to allow him to invoke equitable jurisdiction of this court under Article 226 of the Constitution of India.

Petitioner was allowed opportunity by the Enquiry Officer to appear which he had chosen not to avail. Where



delinquent is afforded opportunity and he chooses not to avail opportunity, in such event, plea of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. Having abstained from enquiry, petitioner cannot be permitted to turn around and contend that proceeding was not in accordance with law.

In this connection, this Court would refer to the decision of the Apex Court in the case of Board of Directors, Himachal Pradesh Transport Corporation & another vs. K.C. Rahi reported in (2008) 11 SCC 502.

In view of the aforesaid circumstance, this Court is also not inclined to entertain the submissions of counsel for the petitioner regarding punishment being disproportionate or excessive.

Facts and circumstances taken note of hereinabove are sufficient to sustain the order dated 25.03.2002 dismissing the petitioner from service. This court does not find any infirmity in his dismissal. Since this court is affirming the order of dismissal, there is no occasion to interfere with the order passed by the appellate authority dated 13.05.2004 passed by respondent no.3.



Writ petition is devoid of merit and the same is
dismissed.

(Madhuresh Prasad, J)

s.hassan/-

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