

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1606 of 2016

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Jaishankar Srivastava son of Umashankar Prasad Srivastava R/o village -
Rajanpur, P.S. - M.H. Nagar Hussainpur, District - Siwan. At present
S.I.S.S.B., 13th Battalion Pipra Kothi, P.S. - Pipra, District - East Champaran.

... .. Petitioner/s

Versus

1. The Union of India.
2. Mr. Rakesh Sinha Commandant, 13th B.N. SSB, Pipra, Pipra Kothi, East Champaran.
3. The Drawing and Disbursing Officer, 13th B.N., SSB, Pipra Kothi, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Yogendra Prasad Sinha, Advocate
For the Respondent/s : Mr Anjani Kr Sharan, ASG

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 10-01-2019

Heard learned counsel for the petitioner and the
respondent-Union of India.

2 Writ petition has been filed challenging the
Memorandum issued under Rule 46 of the Sashatra Seema Bal (for
brevity, SSB), Rules, 2009. The petitioner was informed that
hearing was to be held on 29.09.2015 at 16 Hours at 13th Battalion
Headquarters SSB, Pipra Kothi for the charges framed under the
SSB Act, 2007. Copy of the charge Memo containing four charges
and list of documents and witnesses were submitted along with the
Memorandum. The petitioner has not availed of the opportunity
granted to him by the said Memorandum.



3 On 28.09.2015 that is one day before the enquiry, he has sent a communication to the Commandant of the 13th Battalion that he is not in a position to appear and that he is going on leave and only after return from leave, he would be in a position to comment on the said charge memo. The final order has, thereafter, been passed on 30.11.2015. The petitioner has been intimated that an amount of Rs 7,500/- in four equal installments and Rs 7,519/- in one installment was to be recovered from his salary with effect from December, 2015 onwards.

4 The respondents have placed on record a counter affidavit wherein it has been stated that the petitioner is not joining in the 13th Battalion and is facing five cores of enquiries. Even otherwise, the counter affidavit has highlighted some financial irregularities also. It has been stated that Internal Ministry of Home Affairs has pointed out that petitioner has wrongly claimed Medical Bills. It is submitted that for such allegations of misconduct, the petitioner was proceeded against. He has refused to avail of the opportunity granted to him as is apparent from his own communication dated 28.09.2015 (Annexure 3 to the writ petition). The plea of natural justice raised by the learned counsel for the petitioner is not available to such a petitioner who chooses not to avail of the opportunity granted to him. The law in this



regard is well settled. A person who chooses not to avail of the opportunity granted to him cannot be permitted to turn around and allege that there has been a failure of natural justice in the proceedings.

5 In this connection, this Court would refer to and reiterate the settled principle of law as is apparent from the decision of the Apex Court in the case of *Board of Directors, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi*, reported in (2008) 11 Supreme Court Cases 502. Relying upon the judgment in the case of *K C Rahi (supra)*, this Court would observe that since the petitioner had himself abstained from the departmental proceeding, though ample opportunity was given to him, it is not a case where the petitioner has, in any manner, been prejudiced on account of the alleged violation of principles of natural justice in the procedure adopted by the authorities. Conduct of the petitioner is such that natural justice, in the instant case, also would be deemed to have been waived. Petitioner is estopped from raising the issue of non-compliance with the principles of natural justice.

6 Even otherwise, the various instances of misconduct/allegations in respect thereof, which have been



brought on record in the counter affidavit, have neither been denied nor disputed by filing any rejoinder.

7 Even otherwise, it is submitted by the learned counsel for the Union of India that inspite of the aforesaid non-participation of the petitioner in the proceeding, he has merely been visited with a minor penalty.

8 In the facts and circumstances stated herein above, no case is made out for interference with the charge memo or the order of punishment, both of which have been impugned in the instant writ petition.

9 This writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR	AFR
CAV DATE	NA
Uploading Date	13.02.2019
Transmission Date	NA

