

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7862 of 2015

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Md. Imran Khan @ Imran Khan Son of Md. Noor Khan. Resident of Mohalla
- Hazisubhan, Police Station - Kotwali, District - Munger.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The I.G. Jharkhand Sector, C.R.P.F. Ranchi, Jharkhand.
3. The I.G., C.R.P.F. Range Head Quarter, Muzaffarpur.
4. The D.I.G., C.R.P.F. Range Head Quarter, Muzaffarpur.
5. The Commandant 133 Battalion, C.R.P.F., H.E.C. Sector-2, Dhurba, Ranchi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abdul Manan Khan Mr. Binay Kumar
For the Respondent/s	:	Mr.Rajesh Kr. Verma, ASG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-07-2019

Heard learned counsel for the petitioner and learned
Assistant Solicitor General appearing for the Union of India.

Petitioner who was a constable (GD) has been dismissed from service under order dated 07.08.2012 issued by the Commandant (respondent no.5). Petitioner has been proceeded against on account of his unauthorized absence for a period of 234 days starting from 23.11.2011. Petitioner was, in fact, sanctioned three days casual leave i.e. 23.11.2011 to 26.11.2011. After availing his leave, he was supposed to report on duty on 27.11.2011. Instead of reporting, petitioner without prior permission from any competent authority, abstained from duty.



Authority issued various directions to the petitioner, at least, nine referred to in the counter affidavit. Ignoring the said directions, petitioner chose not to come for joining. Petitioner thereafter, was declared as deserter pursuant to a court of enquiry. On conclusion of court of enquiry, departmental enquiry was initiated against the petitioner. Conducting Officer, namely, Shri Pramod S. Sirsath, Assistant Commandant issued various notices to the petitioner at his home address. After having deserted force, petitioner also chose not to appear before Enquiry Officer.

Petitioner in writ petition has admitted that he did not receive the charge as he was suffering from symptoms of anxiety and hypertension. Proceeding was conducted by Enquiry Officer after giving notice in this regard to the petitioner on 23.04.2012 and 09.05.2012 on the condition that if the petitioner fails to appear the enquiry will proceed ex parte. In view of the aforesaid facts, Enquiry Officer recorded findings on the charge of unauthorized absence, as being proved against the petitioner and awarded punishment of dismissal.

Respondents in the counter affidavit have also placed on record past conduct of the petitioner in respect of various instances of overstayal from the force. Petitioner as per said detail had overstayed upon his leave from force on various instances 12 days,



70 days, 01day, 02 days, 03 days, 111 days and 01 day at different times and has considered him as a habitual offender.

Petitioner has placed on record some medical prescriptions in the supplementary affidavit filed today. Medical prescriptions issued by the government entity are in respect of period other than the period which is in question here. Petitioner has only produced some prescriptions of private doctors to sustain his continued overstay which was considered as desertion from force.

Conduct of the petitioner does not inspire confidence so as to invoke jurisdiction of this court under Article 226 of the Constitution of India. Petitioner was also 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 turn up 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.

Facts and circumstances taken note of hereinabove are
sufficient to sustain the order dated 07.08.2012 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 01.10.2012 or order dated 05.07.2013 passed by
respondent no.2.

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

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	8.8.2019
Transmission Date	NA

