

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.520 of 2018

In
Civil Writ Jurisdiction Case No.574 of 2017

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The State of Bihar & Ors

... .. Appellant/s

Versus

Kaushal Kumar Singh

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Mrigendra Kumar, AC to GA- 4

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-01-2019

Re: I.A. No. 5087 of 2018

Heard learned counsel for the appellant-State.

2. The appeal is reported to be delayed by 232 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 5087 of 2018 stands allowed accordingly.

Re: L.P.A. No. 520 of 2018

This appeal raises a challenge to the impugned judgment dated 21st July, 2017 passed in C.W.J.C. No. 574 of



2017 on the ground that discharge of a Home Guard in terms of Rule 7 of the Bihar Home Guard Rules, 1953 can be on any of the grounds mentioned in Rule 7 which includes for any other special reason to be recorded in writing by the Discharging Authority.

2. Taking aid of the aforesaid provision, learned counsel for the appellant submits that the respondent-petitioner had been discharged as he had acted in an indisciplined manner on the day of a particular parade and, therefore, he had been discharged from service.

3. The learned Single Judge, however, has set aside the discharge order on the ground that a discharge cannot be made in respect of allegations of alleged misconduct which is evident from the manner in which the show-cause notice was issued to the respondent-petitioner and the consideration thereof by the Discharging Authority. The learned Single Judge, therefore, found that this was not a case of discharge even though it could have been a case of disciplinary proceeding.

4. We have considered the submissions raised and we may place on record that discharge is permissible on the grounds referred to in Rule 7 of the 1953 Rules which includes physical fitness, attainment of 41 years of age, at his own



request or for any other special reason to be recorded in writing by the Discharging Authority. Punishments are to be meted out in respect of dereliction of duty or offences which stand defined in Rule 16. The same provides for penalties after proper proceedings are initiated by the Appointing Authority.

5. The distinction, therefore, between discharge under Rule 7 and punishment under Rule 16 appears to be that a discharge would be permissible on the grounds referred to in Rule 7 which includes any other special reason to be recorded in writing. The words 'any other special reason' cannot be construed to be the punishments as envisaged under Rule 16 or the offences under Rule 15. The learned Single Judge, therefore, was right in the conclusion that where the nature of the order amounts to a virtual removal or dismissal for an act of an alleged misconduct then in that event the power to be exercised would be not that of discharge but of punishment as contemplated under Rule 16 for which proceedings have to be drawn up in the light of the said Rules and the procedure prescribed has to be followed.

6. In the present case, the learned Single Judge was correct in his conclusion that a short-cut route was adopted by the appellants by resorting to discharge under Rule 7 which was



not permissible keeping in view the nature of the allegations made against the respondent-petitioner. We are, therefore, of the opinion that the impugned judgment does not call for any interference in view of the legal provisions as discussed hereinabove without prejudice to the rights of the appellant-employer to take such appropriate steps that may be necessary in accordance with law.

7. This Letters Patent Appeal stands dismissed with the aforesaid observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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