

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1630 of 2017**

**In**

**Civil Writ Jurisdiction Case No.5124 of 1999**

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Mehboob Ali, Son of Late Noor Mohammad, Resident of Village – Karsara,  
P.O.- Madiapar, Via – Atralia, District- Azamgarh, Uttar Pradesh

... .. Appellant

Versus

1. The Commandant- cum- Chief Judicial Magistrate, 82 BN (Batalian),  
C.R.P.F. Panisagar ( North Tripura)
2. The Deputy Inspector General of Police, C.R.P.F., Patna, Bihar.
3. The Inspector General of Police, C.R.P.F., Patna, Bihar
4. The Assistant Commandant, 87, C.R.P.F., Panisagar, North Tripura
5. The Deputy Commandant, 87 BN, C.R.P.F., Panisagar, North Tripura

... .. Respondents

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**Appearance :**

For the Appellant : Mr. Bindhyachal Singh , Advocate

Mr. Ram Binod Singh, Advocate

Mr. Vipin Kumar Singh, Advocate

Mr. Rituraj Singh, Advocate

For the Respondents : None

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

**Date : 22-11-2019**

Heard Mr. Bindhyachal Singh, learned counsel for the  
appellant. No one appears on behalf of respondents.

2. This letters patent appeal is directed against the  
judgment dated 14.09.2017 passed by the learned Single Judge in



C.W.J.C. No. 5124 of 1999, whereby he has dismissed the writ petition of the appellant challenging *inter alia* the order of termination from service.

3. Mr. Bindhyachal Singh, learned counsel for the appellant submitted that the impugned judgment passed by the learned Single Judge is absolutely perverse inasmuch as the order under challenge passed by the Commandant, C.R.P.F. was disproportionate to the charges levelled against the appellant. He contended that the learned Single Judge ought to have held that the sentence passed by the Commandant, C.R.P.F. dismissing the appellant from service is not commensurate to the charges levelled against him. According to him, the learned Single Judge also failed to appreciate the fact that the request of the appellant to be defended through Advocate and change of the Enquiry Officer had been refused, which clearly prejudiced his defence.

4. Having heard the learned counsel for the appellant and perused the materials on record, we find that the appellant, a Head Constable posted in E/87 Battalion, committed an offence of misconduct, disobedience of orders and neglect of duties under Section 11 (1) of the C.R.P.F. Act, 1949 (for short 'the Act') on 17.02.1998. He connived with another Head Constable Madhukar Firke and attacked Head Constable Shish Ram injuring him



seriously and breaking his 6<sup>th</sup> right rib. As per preliminary enquiry report the appellant and Madhukar Firke were found fully responsible for the incident. Accordingly, a disciplinary enquiry was ordered and charges were framed against them. During enquiry, instead of participating in the disciplinary enquiry, the delinquents made allegations against the Enquiry Officer and demanded change of Enquiry Officer, which was turned down by the Commandant of the Battalion vide order dated 29.03.1998. They were directed to co-operate with the Enquiry Officer. However, they again committed another criminal offence on 21.04.1998 under Section 9(b) and (j) of the Act. In the second incident also they attacked Head Constable Shatrughan Singh and when one another personnel of the Battalion asked them to stop such crime, they abused him in filthy language and tried to attack publicly in full view of the unit personnels.

5. In this regard, a complaint was lodged before the Commandant -cum-Chief Judicial Magistrate by the Adjutant and a judicial trial was initiated against them for the heinous criminal offences. In the judicial trial also they made false allegations against the Chief Judicial Magistrate in writing. During the trial proceedings the appellant deserted from Lines on 27.04.1998. However, he was found guilty of the charges and was awarded



punishment of imprisonment of one month with effect from 08.05.1998. Consequent to the said award he was dismissed from service with effect from 08.05.1998. The appellant preferred an appeal before the D.I.G., C.R.P.F., Patna, which was rejected vide order dated 09.09.1998. Being aggrieved with the order of the Commandant cum Chief Judicial Magistrate and further rejection of his Appeal by the D.I.G., C.R.P.F., Patna, he filed a revision application before Inspector General, Bihar Sector, C.R.P.F., Patna. The revision preferred by the appellant was also dismissed vide order dated 8<sup>th</sup> January, 1999. Being aggrieved by the revisional Order, the appellant filed a writ petition before this court vide C.W.J.C. No. 5124 of 1999 for quashing the order dated 08.05.1998 passed by the Commandant 87 Battalion and the order passed in appeal by the Deputy Inspector General of Police, C.R.P.F., Patna as well as against the order dated 08.01.1999 passed by the Inspector General of Police, C.R.P.F., Patna dismissing the revision application. The said writ petition has been dismissed by the learned Single Judge vide the impugned judgment dated 14.09.2017.

6. The learned Single Judge while dismissing the writ petition has observed that since the order of dismissal was passed in exercise of power vested in the appointing authority under



Section 12 of the Act, which *inter alia* enables him to dismiss every such person who has been convicted and sentenced to imprisonment, neither any infirmity can be found in the procedure followed by the respondents nor the appellant by his conduct made out a case of indulgence.

7. Section 12 (1) of the Act prescribes liability to dismissal on imprisonment. It provides that **‘every person sentenced under this Act to imprisonment may be dismissed from the Force, and shall further be liable to forfeiture of pay, allowance and any other moneys due to him, as well as of any medals and decorations received by him’.**

8. It is not in dispute that after being tried for the offence under Section 9(b) and (j) of the Act, the appellant has been held guilty and sentenced to imprisonment and the said order of conviction and sentence has not been challenged by the appellant before any court. The order of conviction and sentence for committing a heinous offence has attained finality. Section 12(1) of the Act enables the respondents to dismiss from the force every person sentenced to imprisonment. Moreover, a person having criminal antecedent can not be continued as a disciplined member of Force. Keeping all these facts into mind, if the learned Single



Judge has dismissed the writ petition filed by the appellant, no illegality can be found with the judgment impugned.

9. Accordingly, we see no merit in this appeal. It is dismissed, accordingly.

**(Ashwani Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

praful/-

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