

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.955 of 2018

In
Civil Writ Jurisdiction Case No.4926 of 2016

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Ricku Kumar Chhetry @ Constable 672 Ricku Kumar Chhetry Son of Sri Chitra Bahadur Chhetri, resident of village - Bihar Military Police - 7, P.S. Katihar, District - Katihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Deputy Inspector General, Military Police (Central Zone), Bihar, Patna.
4. The Commandant, Bihar Military Police, 1st Gorkha B.T.N. Patna.
5. The Superintendent of Police, Katihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Jayant Kumar Karn, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG -3

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 30-07-2019

Re: I.A. No. 6278 of 2018

Heard Shri Jayant Kumar Karn, learned counsel for the appellant and Shri Saroj Kumar Sharma, learned AC to AAG -3 for the State.

2. The appeal is reported to be delayed by 25 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. 6278 of 2018 stands allowed accordingly.

Re: L.P.A. No. 955 of 2018

The appellant-petitioner has preferred the present Intra Court Appeal, against the order of the learned Single Judge dated 01.05.2018, by which the learned single has dismissed the writ petition which the appellant- petitioner had preferred on being aggrieved by an order dated 26.12.2014 contained in Memo No. 1403 was dismissed by the Commandant, Bihar Military Police, 1st Gorkha Battalion, Patna for his alleged overstay on leave with effect from 17.05.2014 to 25.12.2014 (223) days. The order of dismissal (Annexure-7) was confirmed by the Appellate Authority, DIG, Military Police, Patna vide order dated 10.08.2015 (Annexure-8). The writ petition was also directed against the rejection of the memorial presented by the appellant-petitioner to the DGP vide order as contained in Annexure-11.

2. The case of the appellant, briefly stated, is that he was on leave from 16.05.2014 to 19.05.2014 but he could not return on his duty as he was suffering from pain in the lower extremity resulting from irritation of the sciatic nerve for which he was under the treatment of Dr. B.K. Gopalka, Katihar and after recovering from the said



sciatic syndrome which had affected from 18.05.2014 to 11.12.2014, the appellant-petitioner again became sick with viral hepatitis for which he came under the treatment of one Dr. P.K. Parween, Medical Officer, High Court Dispensary, Patna. However, before he could return back on duty, a charge memo-cum-show cause notice dated 06.08.2014 was issued whereby suo moto departmental proceeding was initiated against the appellant-petitioner under Rule 843 of the Bihar Police Manual. The said proceeding was initiated without any inquiry having been conducted prior to the issuance of charge memo by the Superintendent of Police calling upon him to explain his absence from duty.

3. The case of the appellant-petitioner is that no information was given to him regarding initiation of departmental proceedings. Since the appellant-petitioner had no information regarding initiation of departmental proceeding, the authorities without taking any fresh initiative regarding the enquiry proceeded to pass ex-parte order and as such, the appellant-petitioner did not get any opportunity to examine the witnesses, which is wholly against the Principle of Natural Justice.

4. It was submitted that ultimately when the appellant-petitioner recovered from his ailment on 30.12.2015 but while he was still at his home, he was purportedly sent a charge memo-cum-show cause notice



and the authorities without his participation proceeded to dismiss the appellant-petitioner. On the basis of the same order of penalty as contained in Memo No. 1403 dated 26.12.2014, the petitioner was relieved from duty with immediate effect and without pay for the alleged unauthorized absence of 223 days in a most arbitrary and illegal manner. The appeal and the memorial preferred against the said order were also rejected and thus, the appellant-petitioner filed the present writ application.

5. We have heard learned counsel for the Appellant-petitioner and learned counsel for the respondents.

6. The crux of the argument advanced by learned counsel for the appellant-petitioner is that the disciplinary proceeding initiated against the petitioner as well as the orders which was passed thereafter, was without any enquiry under Rule 843 of the Bihar Police Manual, which is extracted hereinunder:-

“843. Punishment for absence without leave - Wilful overstayal of leave or absence from duty without leave shall be treated as misbehaviour and after obtaining the explanation of the officer concerned proceedings shall invariable be drawn up and departmental punishment inflicted. If after explanation, it



appears that a police officer had remained absent from duty due to any sufficient reason he shall be granted leave admissible to him for that period. If it is proved that he has violated the Rules at his own will, he can be inflicted with any punishment as provided in Rule 824. The Police Officer who shall be absent from duty without permission shall be liable under Section 29 of Act V of 1861, as amended by Section 9 of the Act VIII of 1895. Such action however, shall be taken only in special circumstances. As a Rule whenever an officer does not return in time on duty, enquires shall be made by the Superintendent/Commandant within one week from the S.P. of his native district, and shall there appear that the officer has not returned to his duties in time for good reasons he should be suspended and departmental proceeding should be undertaken as per rule.”

7. It was further submitted that the entire proceeding which was conducted proceeded without any service of notice to the appellant-petitioner nor he was



carefully examined before the authorities. Furthermore, the witnesses were neither examined nor cross-examined by the appellant-petitioner which clearly prejudiced the case of the appellant-petitioner and in the absence of such procedure having been followed by the respondents, the entire proceeding stood vitiated and could not be sustained in the eye of law. He, thus, submitted that the order of dismissal of the appellant-petitioner be set aside and the appellant-petitioner be taken back in service.

8. Per contra, learned counsel for the respondents-State of Bihar has also filed an affidavit stating that the entire case of the appellant-petitioner that he had developed sciatic syndrome is wholly false and creative as the appellant-petitioner had never applied for leave on the basis of his illness with regard to sciatic pain. On the dates for which he had applied, the appellant-petitioner was granted leave for appearance before the Ranchi Bench of the High Court. Thus, his pretence of sickness cannot be accepted because it was never reported to his Controlling Officer nor had he appeared before the Chief Medical Officer of his Home District. Thus, it can well be deduced that he had managed to obtain his medical certificate.

9. So far as other ground is concerned, learned counsel for the respondents submitted that the Enquiry Officer, during the course of proceedings, had sent a letter through registered post vide Memo No. 376 dated



28.09.2014 calling upon him to put fourth his final defence but again the appellant-petitioner did not turn up. Furthermore, the appellant-petitioner was also served with a show cause notice which he received personally but did not submit his show cause, as such, there was no option for the respondents but to proceed ex-parte against the appellant-petitioner. It was also pointed out by the respondents that the appellant-petitioner had history of absconding from duty without sanction of leave, thirteen times but being a recalcitrant and habitual in the offence of absenteeism, the respondents were left with no other recourse but to discharge him from service as he was causing degradation in the moral and discipline of the force. The DGP, also while considering the appeal of the appellant-petitioner and after applying his judicial mind and after giving due reasons rejected the appeal of the appellant-petitioner vide his order dated 11.02.2015, thus, upholding the order of dismissal.

10. Having perused the entire materials on record and after considering the medical certificates which have also been annexed with the writ application, we find that the learned Single Judge has carefully gone into the order passed by the Commandant. The learned Single Judge has rightly opined that the medical certificates do not inspire confidence so as to induce the authorities to consider his case for grant of leave or extension of his



leave as at no point of time had the appellant-petitioner communicated to the authorities that he was in requirement thereof and, therefore, his leave may be extended. It is, thus, evident that the learned Single Judge has rightly observed that had the appellant-petitioner been ill on account of either sciatic or viral hepatitis, he could have communicated to the authorities and therefore, such absence on his part without any communication to his Controlling Authorities could not be overlooked or condoned in any manner. The appellant-petitioner being a member of the disciplined force was required to take immediate steps for extension of his leave especially in view of the fact that he had been granted leave only to appear in a court's case and not beyond the period as indicated hereinabove, in this context, reference can be made to the judgment of the Apex Court in the case of **Union of India & Ors. Vs. Ghulam Mohd. Bhat** reported in **2005(13) SCC 228** wherein at paragraph-9 it has been stated as hereinunder:-

“9. This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In *State of U.P v. Ashok Kumar Singh* the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty



was disproportionate to the proved charges. No mitigating circumstances has been placed by the appellant to show as to how the punishment could be characterised as disproportionate and/or shocking. (*See Mithilesh Singh v. Union of India*). It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity.”

10. Furthermore, in the case of **Union of India & Ors. Vs. Datta Linga Toshatwad** reported in **2005(13) SCC 228 page 709**, at paragraph 6 & 8, the Supreme Court has wholly deprecated the habit of members of the force in over staying their leaves and has supported the extreme action for such unbridled conduct which are extracted hereinunder:-

“6. One cannot ignore the large number of cases which come to this Court of members of uniformed forces remaining absent from duty without any reasonable explanation. Whenever action is taken, the usual plea taken is of having been ill or some such false



pretext, and even fake or false medical certificates are produced in support of such a plea. We would not have taken a serious view of the matter had it not been a case of a constable belonging to CRPF remaining absent for an indefinite period

“8. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter,



cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged.”

11. Thus, in our considered opinion, we do not find any anomaly in the ratio of the decision of the learned Single Judge which is impugned in the present appeal and we, accordingly, uphold the same. The Appeal is thus, devoid of any merit and must fail.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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CAV DATE	
Uploading Date	31.07.2019
Transmission Date	

