

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1540 of 2018

In

Civil Writ Jurisdiction Case No.20236 of 2010

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Abhay Kumar Singh @ Abhay Singh, Son of Late Ramadhar Singh R/o
Village-Tejpur, Police Station-Telhara, District-Nalanda at Biharsharif

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director General of Police, Govt. of Bihar, Patna
3. The Inspector General of Police, Govt. of Bihar, Patna
4. The Range Inspector General of Police, Darbhanga
5. The Range Deputy Inspector General of Police, Darbhanga
6. The Superintendent of Police, Samastipur
7. The Commandant, BMP-05, Patna
8. The Commandant, BMP-10, Patna
9. The Superintendent of Police, Purnea
10. The Superintendent of Police, C.T.S., Nathnagar, Bhagalpur
11. The Superintendent of Police, Katihar
12. The Deputy Superintendent of Police (HQ), Samastipur
13. The Sergeant Major, Samastipur
14. The Havildar (Training), BMP-5, Patna
15. The then Havildar (Training), BMP-5, Patna, presently S.I. (A), BMP-10,
Patna

... .. Respondent/s

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Appearance :



For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Ram Binod Singh, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, A.C. to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-04-2019

Heard learned counsel for the appellant.

2. The appellant was a Constable and he has been dismissed from service on account of the main charge of unauthorized absence.

3. Learned counsel for the appellant submits that while passing the order of punishment, doctrine of proportionality has not been taken into consideration by erroneously placing reliance on the past conduct of the appellant where punishments earlier awarded have been taken into consideration which, therefore, stands hit by the principles of double jeopardy.

4. The second ground of challenge raised is that the principles of natural justice have been violated and no fair opportunity was granted to the appellant to explain his conduct in relation to the charges that were levelled against the



appellant.

5. It is contended by Shri Bindhyachal Singh, learned counsel for the appellant that the appellant being an illiterate Constable, and he having given a valid and truthful explanation about the non-availability of certain documents, the same ought to have been taken into consideration for taking a sympathetic view of the matter and not awarding harsh punishment on the ground that the appellant is a member of a disciplined Force. It is, therefore, submitted that in the aforesaid background in the absence of any fair opportunity and on account of the error of procedure, the impugned judgment as well as the impugned orders of punishment deserve to be set aside. It was also urged on behalf of the appellant that the doctrine of proportionality has not been taken into account.

6. We have heard learned counsel for the State of Bihar as well and we find that the Inquiry Report clearly mentions the entire procedure that was followed giving opportunity to the appellant at every step to set up his defence. This Inquiry Report dated 13th of September, 2009 is Annexure-4 to the writ petition. It categorically recites that on several occasions the appellant had absented himself voluntarily and without any valid explanation, but so far as the present



proceedings are concerned, the unauthorized absence of 18 days was clearly established. Further, the witnesses who were produced in support of the charges, their statement were recorded and the appellant had been duly informed about the said proceedings, but the appellant voluntarily chose not to appear nor contest the said proceedings by giving any appropriate explanation.

7. The dates on which these proceedings were conducted with due information to the appellant have all been narrated in the Inquiry Report. The Inquiry Officer came to the conclusion that the appellant did not cooperate during the Inquiry proceedings and in the absence of any such explanation, the charges alleged were clearly established.

8. In response to the show-cause notice that was issued to the appellant after submission of the Inquiry Report, the appellant appears to have submitted his reply that was received on 7th December, 2009. A copy of the same is Annexure-6 to the writ petition. The appellant in his reply submitted that since he is receiving training at Motihari, therefore, he is not in a position to give any reply, but at the same time, in the later part of his narrative he has categorically stated that the charges against the appellant are very old and no



evidence is available with him to set up his defence at this stage including his medical receipts which he had earlier produced before the Superintendent of Police have been destroyed as he did not find it relevant to retain them for the present purpose.

9. The said reply, therefore, clearly indicates that the appellant never intended to set up any such defence, as according to him, he had no evidence to furnish before the authority in response to the show-cause issued to him. Thus, the excuse that he was at Motihari and therefore he could not give an effective reply is, therefore, neither tenable nor can be accepted.

10. We, therefore, find that in the absence of any valid defence so as to contradict the charges of unauthorized absence, there appears to be no error either in procedure nor there appears to be any violation of principles of natural justice so as to interfere with the orders on this ground. Apart from this, the impugned judgment of the learned Single Judge proceeds to consider the arguments set out on behalf of the appellant and to reject them on the grounds already stated in the impugned judgment in which we do not find any factual or legal error. We find that keeping in view the repeated and habitual nature of the conduct of the appellant the doctrine of proportionality does not



deserve to be invoked in the facts of the present case. We are, therefore, in agreement with the conclusion drawn by the learned Single Judge. The appeal fails and is hereby dismissed.

(Amreshwar Pratap Sahi, CJ)

(Partha Sarthy, J)

P.K.P./-

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