

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22844 of 2019

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Amit Kumar Son of Sri Devendra Ram, Resident of Village/Mohalla and
P.O.- Dhangawan, P.S.- Jehanabad, District- Jehanabad.

... .. Petitioner

Versus

1. Union of India through the Secretary, Home (Police) C.R.P.F., New Delhi.
2. Inspector General, C.R.P.F., New Delhi.
3. Deputy Inspector General, Delhi Region, C.R.P.F., R.K. Puram, New Delhi.
4. Commandant, 158 Battalion C.R.P.F., Lohardagga, Jharkhand.
5. Assistant Commandant, 158 Battalion, C.R.P.F., Lohardagga, Jharkhand.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Pramod Kumar
For the Respondent/s	:	Mr.S.D. Sanjay (Adsg)
		Ms. Kanak Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 23-01-2020 Heard learned Counsel for the petitioner and the

learned ASG for the Union of India.

The brief facts giving rise to the instant writ petition is that the petitioner was a Constable under the respondent force CRPF. In order to attend the last rites of his father-in-law, he submits he was granted leave from 24.6.2013 to 3.7.2013. The case of the petitioner is that immediately after lapse of the said period he was visited with unfortunate circumstance, being death of his wife on 15.7.2013.

Referring to these two incidents, it is submitted that the order of dismissal issued by the Disciplinary Authority dated



7.1.2016 was unsustainable in the eyes of law.

The admitted position is that from 24.6.2013 till 7.1.2017 the petitioner never returned to his post. Absence of the petitioner is for more than three and half years. The petitioner has also not placed on record any communication or any application sent by him to his place of posting or his controlling authority communicating such unfortunate circumstances, or claiming any extension of leave. Having regard to the disciplinary force in which the petitioner was serving, whether such an application would have been allowed for such a long period of three and half years is another issue which could have been considered, had the petitioner approached the authorities. The admitted position is that he never returned to the force for more than three and half years. It is only after dismissal order came to be passed that the petitioner has awoken from his deep slumber and filed appeal before the Deputy Inspector General of CRPF. The appeal filed by the petitioner has also not been placed on record. The order of the appellate authority, Deputy Inspector General of CRPF, is Annexure 12 to the writ petition.

The order of the Appellate Authority in para 3 records details with reference to various dates when notices were repeatedly issued to the petitioner. From the records, it is



also clear that the petitioner has not even appeared before the Appellate Authority.

It is in these circumstances that Counsel for the petitioner submits that the order of the Disciplinary Authority is bad in law, inasmuch as the enquiry has been conducted in total violation of the principles of natural justice. No witness was examined, no opportunity was granted to the petitioner to cross-examine the witnesses, the order of dismissal is disproportionate and that even the enquiry report was never served on the petitioner.

The facts taken note of by this Court make it abundantly clear that this is a clear case of waiver of natural justice on account of refusal by the petitioner to respond to the various notices issued in the enquiry. Long unauthorised absence of the petitioner for more than two and half years from the Para Military (Uniform Force) would itself weigh against the petitioner's eligibility for continuing in such a force.

The Apex Court in the case of ***Board of Directors, Himachal Pradesh Transport Corporation and ors. Vs. K.C.Rahi*** reported in ***(2008)11 SCC 502***, has clearly held that where the delinquent/employee chooses not to appear in the proceeding and absents from the same in spite of opportunity



having been granted, it is a circumstances where there is a deemed waiver of the principles of natural justice and the delinquent is estopped from raising the issue of non compliance with the principles of natural justice and that the principles are not to be applied as a straight jacket formula.

Even otherwise, as noticed herein above, the conduct of the petitioner in absenting himself for such a long period leaves a lot to be desired from the petitioner who had obtained appointment in Para Military Force.

Clearly no case is made out for exercise of jurisdiction or to issue any direction under Article 226 of the Constitution of India.

The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

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