

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3836 of 2020

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Anil Kumar @ Anil Kumar Lakada Son of Late Jharilal Urav, Resident of Village-Nawada Raipur, Post-Bijaili, P.S.-Dand Khora, District-Katihar.

... .. Petitioner

Versus

1. The State of Bihar through the Principle Secretary (Home) Police Department Bihar, Patna.
2. The Director General of Police cum Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police Rail, Patna.
4. The Superintendent of Police Rail, Katihar.
5. The Police Inspector Railway cum Enquiry Officer, Saharsa.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Upendra Kumar Singh, Advocate
For the Respondent State:		Mr. Sheo Shankar Prasad, SC-8
For the Respondent Railway:		Mr. Ramadhar Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 13-07-2021 The petitioner has sought for quashing of an order dated 03.07.2015 passed by the Superintendent of Police (Rail), Katihar, whereby he has imposed upon the petitioner a punishment of dismissal from service on the proved charge of misconduct.

2. It appears that at the relevant point of time the petitioner was posted as a Constable under Railway Police, Katihar. He had remained absent from 04.10.2012 to 02.10.2013 and 25.10.2013 to 14.10.2014 unauthorizedly, which led to



petitioner being put on a show cause notice.

3. It appears that despite show cause notice issued to the petitioner regarding his unauthorized absence, he had not joined, consequent upon which, he was placed under suspension by an order dated 10.12.2013, which was subsequently revoked by an order dated 25.12.2014 at the petitioner's request. A departmental proceeding was thereafter held against the petitioner. The enquiring authority, in its report, held the charge against the petitioner of unauthorized absence to be proved. It is the petitioner's case that as he was suffering from mental instability and was under treatment, he could not report for the duties. On the said plea, in his written statement of defence, the petitioner had sought for dropping of the charge against him.

4. This is not in dispute that the petitioner was given a show cause notice containing proposed punishment of dismissal from service with a copy of the report of the enquiring authority. The petitioner had responded to the said show cause notice. However, the petitioner's defence did not find favour with the disciplinary authority and accordingly by the impugned order dated 03.07.2015, the disciplinary authority inflicted upon the petitioner punishment of dismissal from service. The petitioner thereafter preferred an appeal before the appellate



authority, i.e., the Deputy Inspector General, Rail, Bihar, on 25.09.2018 that is more than three years after the passing of the order of dismissal. The appellate authority dismissed the petitioner's appeal by referring to Rule 852(*ka*) of the Police Manual, which allows an appeal to be preferred within a period of six months. The appellate authority, finding the petitioner's appeal to be hopelessly barred by limitation, dismissed the appeal by an order dated 26.09.2018. The petitioner thereafter preferred a memorial before the Director General of Police, Bihar. The said memorial has also been rejected by the Director General of Police by an order issued vide letter dated 03.06.2019. The petitioner has put to challenge the order of the appellate authority dated 26.09.2018 and the order of the Director General of Police dated 03.06.2019.

5. Learned counsel for the petitioner has referred to pathological reports and cash memo for purchase of medicines to make out a case that he was suffering from prolonged illness and, therefore, he was unable to join his duties. He has contended that without going into the defence set up by the petitioner in his written statement of defence, the disciplinary authority has imposed the order of punishment. He has argued that it was incumbent upon the appellate authority to



have examined the merit of the appeal instead of dismissing the appeal on the ground of limitation.

6. A counter affidavit has been filed on behalf of the respondent State of Bihar, which has been replied on behalf of the petitioner by filing a rejoinder affidavit.

7. Learned counsel representing the State of Bihar has submitted that there is no procedural irregularity in the departmental proceeding, which culminated into passing of an order of dismissal by the disciplinary authority. According to him, the petitioner was given ample opportunity to explain his conduct. He has contended that the finding recorded by the enquiring authority is based on evidence and the same cannot be said to be suffering from any legal infirmity. He has accordingly submitted that the decision of the disciplinary authority to accept the finding recorded by the enquiring authority also cannot be faulted with. He has further submitted that in the absence of any cogent reason to explain delay of more than three years in filing appeal against the order of dismissal, the decision of the appellate authority to dismiss the petitioner's appeal is quite justified.

8. I have perused the pleadings on record and I have considered the rival submissions made on behalf of the



parties. This is an admitted fact that the order of dismissal was passed on 03.07.2015. It is not the petitioner's case that he was not knowing about the said order of dismissal. The petitioner preferred his appeal more than three years after passing of the order of dismissal before the appellate authority. The appellate authority reached a conclusion that there was no explanation for delay of three years in preferring the appeal. I do not find any illegality in the said view taken by the appellate authority while rejecting the petitioner's appeal against the order of the disciplinary authority.

9. Further, it has been noticed that the Director General of Police has gone into the details of all material facts available on record of the departmental enquiry, while considering the memo of appeal as is evident from the order dated 03.06.2019 passed by him. It is evident from the said order that there is application of mind and cogent materials have been taken into account by him before rejecting the petitioner's memorial.

10. In the aforesaid circumstances, exercising power of judicial review under Article 226 of the Constitution of India it is not deemed fit and proper to interfere with the impugned orders. In my view, this application has no merit and



is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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