

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1860 of 2012

In

Civil Writ Jurisdiction Case No.12771 of 2010

Sunil Kumar S/o Sri Akhilesh Kumar R/o Village- Dariyapur, P.S.- Udawant
Nagar, Distt.- Bhojpur, State- Bihar

... .. Appellant/s

Versus

1. The Union of India through the Director General of Police, C.R.P.F., Block No.1, C.G.O. Complex, Lodhi Road, New Delhi - 3
2. The Inspector General, C.R.P.F., Bihar Sector, Patna
3. The Dy. Inspector General, C.R.P.F., Patna, Bihar
4. The Commandant, 4th B.N., C.R.P.F. Smailpur (J & K), Govt. of India

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arun Kumar, Advocate Mr. Parwej Khan, Advocate Mr. Mukesh Kumar Singh, Advocate
For the Union of India	:	Dr. K.N. Singh, Sr. Advocate, ASG Mr. Anshuman Singh, CGC

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 08-12-2021

The present appeal is directed against the order dated 10.09.2012 passed by the learned Single Judge in CWJC No. 12771 of 2010.

The issue involved in the present case is the validity of the order dated 19.02.2007 passed by the Deputy Inspector General, CRPF, Patna, whereby and whereunder the appellant herein has been dismissed from the post of Sub-Inspector, CRPF



as also the appellate order dated 18.03.2005 and the revisional order dated 15.04.2010, which had been assailed by the appellant herein before the Writ Court.

The only issue canvassed by the learned counsel for the appellant is that the enquiry has been held ex parte behind the back of the petitioner, hence ample opportunity has not been granted to the petitioner, thus the impugned order of dismissal of the petitioner from the post of Sub-Inspector, CRPF dated 19.02.2007 and the consequential orders dated 18.03.2009 and 15.04.2010 are bad in law.

Per contra, the learned counsel for the respondents, by referring to paragraph nos. 8 to 12 of the impugned judgment dated 10.09.2012 has submitted that though the petitioner had initially appeared before the Enquiry Officer but had thereafter voluntarily remained absent on account of which the Enquiry Officer was forced to conduct the enquiry ex parte.

We deem it fit and proper to reproduce paragraph nos. 8 to 12 of the impugned order dated 10.09.2012 herein below:-

“8. In the said case the memorandum of charges alongwith statements & articles of charges, imputation of misconduct and list of documents and list of witnesses were sent to the Commandant 4th Bn, C.R.P.F. and were handed over to the petitioner on 06.10.2005, but when no representation was



received from the petitioner within the stipulated period, the said Commandant was appointed as the Enquiry Officer vide order dated 23.11.2005 to conduct the departmental inquiry against the petitioner; whereafter enquiry was started on 16.12.2005, but the plea of guilty/not guilty was not recorded by the Enquiry Officer as the petitioner left the Campus on 13.12.2005, hence a registered letter was sent to the petitioner on 20.12.2005 with a direction to report before the Enquiry Officer on 02.01.2006 for the completion of the enquiry timely, but after receiving the said letter, the petitioner did not report nor sent any communication. Hence, another letter dated 21.03.2006 was sent to him at his home address directing him to report before the Enquiry Officer, but thereafter also the petitioner did not appear nor sent any communication.

“9. In these circumstances, ex parte hearing was started in which the prosecution produced its witnesses in the absence of the petitioner and after recording statements of prosecution witnesses, copies of each statements were also sent to the petitioner at his home address through registered post. It was only thereafter the enquiry officer proceeded further and concluded the enquiry ex parte, but before submission of enquiry report ample opportunity was given to the petitioner in writing to appear before the Enquiry Officer, but he did not avail the chances as he neither appeared nor sent any information. In the said circumstances, the Enquiry Officer was quite justified in concluding his findings and submitting the proceedings.

10. So far provision of Rule 31 of the Rules is concerned, no doubt it should have been followed in the normal circumstances, but in the instant case when the enquiry officer was appointed and



information about it was sent to the petitioner who initially appeared before the enquiry officer, but he neither raised any such objection either before the Enquiry Officer or before the Disciplinary Authority with respect thereto and remained absent, due to which the said enquiry officer was forced to conduct the enquiry ex parte.

11. Furthermore, in this case enquiry had been initiated in a very special circumstances when the petitioner being an officer of a disciplined force not only remained absent for 86 days at the first instance, but also remained absent for 58 days in the second instance and to top it all he again deserted on 16.05.2005 without even depositing the arms and ammunitions which were drawn by him from the battalion and much subsequently it was to be recovered by the Coy Commander from the bedding of the petitioner and was deposited.

12. In these special circumstances, the enquiry officer was appointed who proceeded with the matter in quite proper and justified manner taking all the steps as per the requirements, sending copies of the memorandum of charges, witnesses etc. to the petitioner and time and again giving relaxation to the petitioner to present his case either claiming to be guilty or not guilty, but in spite of that petitioner neither appeared nor sent any communication even during the pendency of the enquiry which continued for months together. The explanation given by the petitioner was considered at length and it was found to be absolutely frivolous and misleading especially when the petitioner was found to be a chronic deserter and as such repeated desertions without any valid rhyme and reason should not be tolerated in a Force like C.R.P.F.”

The learned counsel for the respondents has further



submitted that the appellant herein being an Officer of a disciplined force, had deserted/absconded from his duties on several occasions without depositing his arms. The learned counsel for the respondents has also referred to paragraph nos. 12 and 13(first) of the impugned judgment dated 10.09.2012 in this regard, which are reproduced herein below:-

12. In these special circumstances, the enquiry officer was appointed who proceeded with the matter in quite proper and justified manner taking all the steps as per the requirements, sending copies of the memorandum of charges, witnesses etc. to the petitioner and time and again giving relaxation to the petitioner to present his case either claiming to be guilty or not guilty, but in spite of that petitioner neither appeared nor sent any communication even during the pendency of the enquiry which continued for months together. The explanation given by the petitioner was considered at length and it was found to be absolutely frivolous and misleading especially when the petitioner was found to be a chronic deserter and as such repeated desertions without any valid rhyme and reason should not be tolerated in a Force like C.R.P.F.”

13. In the said circumstances, the punishment given to the petitioner by the authority concerned was quite legal, justified and proper and was rightly affirmed in appeal and revision filed by the petitioner especially when in the appellate as well as revisional order, this Court finds, that the authorities concerned had dealt with the matter in detail and considered the points raised by the petitioner and thereafter came to specific conclusion that on examination of the case it was



found that the charges levelled against the petitioner stood established. The charges are grave and the penalty awarded is commensurate with the gravity of the offence committed by him. Accordingly, the said order had been upheld.”

We have heard the learned counsel for the parties and perused the materials on record from which we find that the learned counsel for the appellant has failed to point out any infirmity in the impugned judgment dated 10.02.2012 so as to warrant any interference especially in view of the fact that the respondents had taken all precautions to grant appropriate opportunity to the petitioner, however, the petitioner had voluntarily not availed the same and had been dilly dallying all through out the enquiry proceedings resulting in the Enquiry Officer concluding the enquiry and submitting his enquiry report. We also find from the record that the charges levelled against the petitioner has stood established, which are grave in nature and accordingly, the punishment of dismissal from service awarded to the petitioner is appropriate and does not require any interference. In fact the appellate authority as also the revisional authority have also considered the appeal and revision filed by the appellant herein in detail. We thus do not find any legal infirmity in the impugned order dated 10.09.2012 passed in CWJC 12771 of 2010, hence the present appeal stands



dismissed.

(Rajan Gupta, J)

Mohit Kumar Shah, J:- I agree.

S.Sb/-

(Mohit Kumar Shah, J)

AFR/NAFR	
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