

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10425 of 2020

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Anant Kumar Sharma Son of Sri Sheo Shankar Sharma Resident of Village-
Kanhauli, Bishaudat Ward No. 47, P.O.- Ramna, P.S.- Mithanpura, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The D.I.G. of Police Military Police, Northern Zone, Muzaffarpur.
4. The Commandant B.M.P.-15, Valmikinagar, Bagha (I.R.B.-3) Camp BMP-6, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Lalit Kishore (AG)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 24-08-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 24.10.2018 passed by the Commandant, BMP-15, Valmikinagar, Bagaha camp-BMP-6, Muzaffarpur, whereby and whereunder the petitioner has been inflicted with the punishment of withholding of increment for six months. The



petitioner has also prayed for quashing of the order dated 25.05.2019 passed by the Deputy Inspector General of Police, Military Police, Northern Zone, Muzaffarpur, whereby and whereunder the appeal of the petitioner has been rejected.

3. The brief facts of the case are that the petitioner had taken leave of nine days from 11.06.2018, for taking his daughter to Delhi to get her admitted in a coaching institute and he was supposed to join duty on 21.06.2018 but on account of certain unavoidable circumstances, the petitioner found that he would not be able to join his duty on 21.06.2018, hence he submitted a representation before the Commandant, BMP-15, Valmikinagar on 19.06.2018 by E-mail and requested him to extend the leave by a further period of 15 days. It appears that the representation of the petitioner dated 19.06.2018 was not put up immediately and could be put up before the competent authority only on 22.06.2018. The petitioner had then joined his duties on 06.07.2018 after overstaying for 15 days. The disciplinary authority had then framed charges against the petitioner on 08.08.2018 and a departmental proceeding was initiated against the petitioner. The Enquiry Officer had then submitted enquiry report dated 08.10.2018, wherein the charge leveled against the petitioner of over-stayal for 15 days was



been found to have been proved. Thereafter, the disciplinary authority, vide order dated 24.10.2018, had inflicted punishment of withholding of increment for six months as also it was directed to forfeit the salary of 15 days pertaining to the period of over-stayal. The petitioner had then filed an appeal before the DIG, Military Police, Northern Zone, Muzaffarpur, however, the same was rejected vide order dated 25.05.2019.

4. The learned counsel for the petitioner has submitted that the petitioner had submitted representation/application by E-mail on 19.06.2018 for extension of his leave by a further period of 15 days i.e. much before the expiry of leave period i.e. 21.06.2018, on which date he had to re-join his duties, however, the same could not be placed before the competent authority in time resulting in the entire confusion and the subsequent proceeding against the petitioner, leading to passing of the punishment order dated 24.10.2018. It is thus submitted that without any fault on the part of the petitioner, the petitioner has been punished. The learned counsel for the petitioner has further referred to Rule 843 of the Bihar Police Manual to submit that whenever an officer does not return in time on duty, enquiry is required to be made by the Superintendent/ Commandant within one week from the S.P. of his native district but in the present



case the said procedure was not followed, hence the order of punishment dated 24.10.2018 is vitiated in the eyes of law. The learned counsel for the petitioner has further referred to Rule 824(e) & (f) and Rule 828 of the Bihar Police Manual to submit that the punishment inflicted upon the petitioner is a major punishment which is in fact disproportionate to the offence alleged inasmuch as the petitioner has, as a consequence of infliction of the aforesaid punishment, been debarred from grant of MACP for three years.

5. Per contra, the learned counsel for the State has submitted that first of all there is no illegality or irregularity in the procedure adopted by the disciplinary authority for conduct of the departmental proceeding, leading to infliction of punishment vide order dated 24.10.2018, hence this Court would not sit in appeal and re-appreciate the evidence, thus the present writ petition is fit to be dismissed. The learned counsel for the respondent-State has further referred to Rule 802 of the Bihar Police Manual which pertains to over-stayal of leave and prescribes that if an officer has applied for an extension of his leave but has received no information that an extension has been granted, he has to re-join his duties on the expiry of his leave. It is also submitted that under Rule 843 of the Bihar Police



Manual, willful overstayal of leave or absence from duty without leave is to be treated as misbehavior and after obtaining the explanation of the officer concerned, proceedings have to be drawn up and departmental punishment has to be inflicted. The learned counsel for the respondent-State has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. P. Gunasekaran*** reported in ***(2015) 2 SCC 610*** to submit that the High Court in exercise of its power under Article 226 & 227 of the Constitution of India, cannot venture into re-appreciation of the evidence or interfere with conclusions arrived at in the enquiry proceedings, if the same have been conducted in accordance with law or go into the reliability/adequacy of evidence or interfere if there is some legal evidence on which findings are based or correct error of fact, however, grave it may be.

6. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that there is no illegality or irregularity as far as the conduct of the departmental proceeding is concerned and in fact no such allegation has also been leveled by the petitioner, hence this Court would not re-appreciate the evidence or interfere with the conclusions arrived at in the enquiry proceedings or go into the



reliability/adequacy of the evidence or correct error of fact, however, grave it may be, as has been held by the Hon'ble Apex Court in the case of **P. Gunasekaran** (supra), thus this Court does not find any reason to interfere with the punishment order dated 24.10.2018, as far as merits of the case is concerned. Now, coming to the issue regarding the proportionality of the punishment inflicted upon the petitioner vis-à-vis the charges leveled against him, this Court finds that since a major punishment has been inflicted upon the petitioner for his act of over-stayal of leave by 15 days, which appears to have occurred on account of miscommunication/misunderstanding, since though the petitioner had talked to his Commandant with regard to extension of his leave, as has been stated by the petitioner in paragraph no. 4 of the rejoinder to the counter affidavit and had then filed an application for extension of his leave by E-mail dated 19.06.2018, however, on account of the same having been placed before the competent authority only on 22.06.2018 i.e. after the expiry of the re-joining date i.e. 21.06.2018, an impression was given that the petitioner had without information, willfully over stayed his leave, hence this Court finds that the major punishment imposed upon the petitioner is harsh, excessive and disproportionate to the offence alleged,



thus requires re-consideration by the appellate authority.

7. In such view of the matter, the order dated 25.05.2019 passed by the DIG of Police, Military Police, Northern Zone, Muzaffarpur is set aside and the matter is remanded back to the appellate authority, only for the purposes of reconsidering the issue regarding quantum of punishment i.e imposition of major punishment of withholding of increment for six months.

8. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	13.08.2021
Uploading Date	25.08.2021
Transmission Date	

