

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 490 of 2021

Arising out of

Civil Writ Jurisdiction Case No. 3836 of 2020

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Anil Kumar @ Anil Kumar Lakada, Male, aged about 42 years, Son of Late Jharilal Urav, Resident of Village- Nawada Raipur, Post- Bijaili, PS- Dand Khora, District- Katihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal 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.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. S S P Yadav, Advocate, with
Mr. Upendra Kumar Singh, Advocate

For the State : Mr. Prabhat Kumar Verma, AAG 3 with
Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 20-09-2021

The matter has been heard *via* video-conferencing.

2. Heard Mr. S S P Yadav, learned counsel along with
Mr. Upendra Kumar Singh, learned counsel for the appellant and



Mr. P K Verma, learned Additional Advocate General 3 along with Mr. Suman Kumar Jha, learned Assistant Counsel to AAG 3 for the State.

3.The present appeal is directed against the order dated 13.07.2021 passed by the learned Single Judge in CWJC No. 3836 of 2020, whereby the order of dismissal from service of the appellant, which was upheld by the Appellate Authority and Memorial Appeal also dismissed, has not been interfered with.

4. The brief facts of the case are that the appellant was appointed as a police constable on 08.02.1999. The appellant left his duty on 04.10.2012 without information and after 64 days gave his joining on 07.01.2013 due to which, by District Order No. 1167 of 2021, his salary was stopped and later by District Order No. 133 of 2013, his salary was released from the date of joining. By District Order No. 158159, he was directed to join at Purnea Police Station. Till 01.09.2013, since the appellant had still not joined, through Office Memo No. 1866 dated 27.08.2013, the Rail PS, Purnea sought information from the Rail Police, Katihar. The Station House Officer, Rail PS, Purnea *vide* Memo No. 510/13 dated 13.09.2013, informed that till date the appellant had not joined the Rail PS, Purnea. After that, the appellant after voluntarily absenting himself from duty for 269 days gave his



joining on 03.10.2013. On 15.11.2013, the SHO, Rail Police, Katihar, under Memo No. 607/13 informed that on 25.10.2013, the appellant was sent to Patna in connection with law-and-order duty for the *Hunkar* Rally. All the officers and employees after completing the said duty had joined back on 11.11.2013. However, the appellant did not return to his duty for which Rail District Order No. 1218/13 was issued by the Superintendent, Rail Police, Katihar under Memo No. 1920 dated 03.09.2013 and show cause was asked for from him and he was also directed to join. Yet, the appellant neither joined nor submitted any show cause resulting in his suspension with effect from 10.12.2013 with subsistence allowance. Subsequently, by Office Memo bearing no. 2577 dated 11.12.2013 of the Superintendent, Rail Police, Katihar, the appellant was asked to join and also submit his show cause which he did not do and departmental proceeding no. 4/2014 was initiated against him. In the said proceeding, the Inspector, Rail Police, Saharsa was appointed as the Enquiry Officer. The appellant was found guilty of the charges against him in the inquiry report. Based upon the same, the Superintendent, Rail Police, Katihar, after taking into consideration all the documents and materials, including the statements of witnesses, the show



cause of the appellant and the report of the Enquiry Officer, issued a second show cause to him.

5. However, the appellant finally joined his duty after 415 days on 15.12.2014. Again, the appellant was sent to the CTC Training Centre, Sasaram and from there, he proceeded on leave for four days on 20.01.2015 and had to return by 24.01.2015, but did not do so, for which, by Order No. 18/15 and Rail District Order No. 201/15, his salary was stopped. As he had not joined for more than 30 days, he was sent back by the Commandant, Training Centre, Sasaram, without training, to the Rail District, Katihar, where also, the appellant joined after 115 days on 21.05.2015. Thus, for being absent for a total period of 894 days, the Enquiry Officer gave his report holding him guilty. The appellant was directed to join his duty under Memo No. 676 dated 15.05.2015, which was also published in the newspaper. He was also sent notice to show cause with regard to his dismissal from service under Office Memo No. 678 dated 15.05.2015. The said letter was received by the appellant on 18.05.2015 and his reply to the show cause was received in the office on 19.06.2015. Along with his reply to the show cause, he had also enclosed certificates from doctors for various periods, from 13.10.2011 till 17.04.2015. The Disciplinary Authority i.e., the Superintendent of Police, Rail,



Katihar, ultimately passed final orders on 02.07.2015, as communicated under Memo No. 885 dated 03.07.2015, holding the appellant guilty of being absent/absconding for 894 days and dismissing him from service with effect from 03.07.2015. Further, for being absent from duty from 23.06.2015 to 25.06.2015, his salary was forfeited, though it was adjusted against extraordinary leave. One of the reasons indicated in the order of dismissal was that the doctors' certificates produced by the appellant were not from any authorized hospital and did not indicate any hospital admission.

6. The appellant assailed the aforesaid before the Appellate Authority, which appeal came to be dismissed by the Deputy Superintendent of Police, Railway, Bihar under Memo No. 421 dated 26.09.2018, on the ground that the appeal was not submitted within the stipulated period. The Memorial Appeal preferred by the appellant before the Director General of Police, Bihar was ultimately dismissed through order dated 31.05.2019 contained in Memo No. 476/426985/L-1/43-04-102-2018 dated 03.06.2019, on the ground that the charges against him were grave.

7. Learned counsel for the appellant submitted that though he has lost at the appellate stage and the Memorial Appeal



before the Director General of Police, Bihar was rejected and the learned Single Judge has also declined interference; but his basic contention has not been considered. It was submitted that the appellant, before the Appellate Authority, had clearly indicated the grounds on which the appeal was filed, but none of the same have been considered, which vitiates the appellate order. It was submitted that the appellant had categorically taken the point that no Presenting Officer was ever appointed in the case, which is a serious illegality and against the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules'). It was submitted that the appellant was also not allowed to take the help of any other government servant. Learned counsel submitted that the Director General of Police, Bihar under Memo No. 235-344106/L dated 20.12.2017 had set aside all departmental proceedings holding it not to be in conformity with the Rules. Learned counsel pointed out that in the case of ***Pramod Kumar Singh v. State of Bihar, 2006 (3) PLJR 296***, it has been held by a learned Single Judge of this Court, that if the doctors' certificates and prescription is not believed or relied upon by the authorities, they were required to get the person examined by a Medical Board of their choice and in the absence of which it cannot be held that the person was feigning illness.



Learned counsel submitted that in the present case, when the certificate of the doctors was placed before the Appellate Authority, as has also been noted in the order, the same was neither verified nor was the matter referred to a Medical Board, and the reports were summarily dismissed on the flimsy ground that they were not from an authorized hospital, which, learned counsel urged, is totally arbitrary. He submitted that the charges for which the departmental proceeding was conducted, included such charges which were already considered by the authorities earlier and only thereafter, he had been permitted to join. Thus, it was contended that once when for such periods of absence, the authorities had taken a view and he was allowed to join, the same could not have again been a charge in the present departmental proceeding. It was submitted that though the last charge of not having joined pursuant to being sent for training was never a charge in the departmental proceeding for which enquiry was conducted, still a negative finding has also been given on such charge. Learned counsel summed up his arguments by contending that in the final order of dismissal, his salary for the period from 23.06.2015 to 25.06.2015, has been forfeited, which is illegal as the same could not have been ordered in the present proceeding without there being a specific show cause issued to him as also



with regard to the authorities holding that for the period of suspension, except for subsistence allowance, no other amount was payable, which also required issuance of a show cause notice to the appellant giving him an opportunity to file his reply, which, admittedly, has not been done. Learned counsel canvassed that most importantly, the proportionality of inflicting extreme penalty of dismissal from service without giving benefit of his entire service career, is wholly arbitrary, unreasonable, disproportionate to the charges and, thus, unsustainable in the eyes of law.

8. He submitted that the learned Single Judge had not appreciated properly the contention of the appellant and has simply dismissed the writ petition by holding that it was not deemed fit and proper to interfere with the impugned orders. It was submitted that though there may have been delay in filing of the appeal, but the appellate order itself stating that the same is rejected only on the ground of delay, it is apparent that there has been no consideration on merits with regard to the points and issues raised by the appellant. Learned counsel submitted that the writ Court being a Court of equity also, was required to give one opportunity to the appellant for placing his defence, for consideration in accordance with law, on merits, which has not been done. He submitted that the appellant, right from the very



beginning, has been submitting that he was not in proper mental or physical condition which has resulted in him losing his job and, thus, the delay was also attributable to conditions and circumstances beyond his control, which were neither deliberate nor wilful.

9. *Per contra*, learned Additional Advocate General 3 for the State submitted that the appellant, despite submitting an initial show cause had not participated further in the enquiry and, thus, after following the proper procedure, the enquiry was concluded and report submitted holding him guilty and he was also given a second show cause and the reply not having been found satisfactory, the final order of dismissal was passed. Further, it was submitted that the dismissal of the appeal on the ground of being filed beyond the time prescribed is also in accordance with law as the Rules do not permit filing of such appeal if the same is beyond the time limit prescribed for doing so. Similarly, it was contended that the Memorial Appeal, filed before the Director General of Police, Bihar has also rightly been rejected. On the question of proportionality, learned counsel submitted that the authorities have taken a view that the appellant be dismissed from service which does not need any interference.



10. We have gone through the record, considered the rival submissions of the parties, and examined the facts and circumstances of this case.

11. In **Ranjit Thakur v. Union of India, (1987) 4 SCC 611**, the Hon'ble Supreme Court stated:

'25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that



further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . ."

26. In *Bhagat Ram v. State of Himachal Pradesh* [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] this Court held: [SCC p. 453, SCC (L&S) p. 353, para 15]

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

The point to note, and emphasise is that all powers have legal limits.

27. In the present case the *punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.*'

(emphasis supplied)

12. In *Commissioner of Police v. Syed Hussain*, (2006)

3 SCC 173, the Hon'ble Supreme Court held thus:

'13. It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate case as the depth of judicial review will depend on the facts and circumstances of each case.'

(emphasis supplied)



13. We are conscious that in *Syed Hussain (supra)*, whilst making the afore-noted observation, the order imposing punishment of removal from service was upheld in the facts therein. At the same time, we also bear in mind that judgements are not to be read as Euclid's theorems, nor are they to be construed as statutes and all observations must be read in the context in which they appear – reference in this regard can be made to the judgements in, *inter alia*, ***BGS SGS Soma JV v. NHPC Limited, (2020) 4 SCC 234*** and ***Chintels India Limited v. Bhayana Builders Private Limited, (2021) 4 SCC 602***.

14. This Court finds that the appellant has been able to make out a case for interference, albeit limited in nature. The admitted position is that the enquiry report was submitted only on the initial show cause supplied by the appellant and though in the enquiry, witnesses were examined and documents also taken into consideration, but because the appellant had not participated in the enquiry, he could neither have replied to such documents/materials nor cross-examine the witnesses. This aspect alone may not vitiate the enquiry. However, when at the appellate and memorial stage, the appellant had specifically raised issues, both on facts as well as in law and had also enclosed supporting documents, especially with regard to his illness, giving doctors'



certificates, in the considered opinion of the Court, the same were required to be looked into as the purpose of giving a person a chance to file an appeal/memorial is that there is no miscarriage of justice and if there has been any omission at the previous stage, the superior authorities are able to correct such mistake. The State being a model employer and the purpose and the spirit of law being that no injustice should be caused to anyone, required, at the very least, consideration of the issues raised by the appellant, both factual as well as legal. In the present case, the issue that there was no Presenting Officer appointed and the appellant, in his Memo of Appeal, giving specific details of the circular of the Director General of Police, by which all departmental proceedings had been negated only on the ground that there was no Presenting Officer appointed by the Department, has not been dealt with. Furthermore, the issue that the certificates given by the doctors, just because they were not from an authorized hospital, is, in our opinion, a *non-est* ground, for every doctor who has got a licence to practice, being registered with the Medical Council of India, is supposed to be, in law, competent as a professional to give such certificate with regard to the medical condition of a person. Thus, the onus was on the authorities to negate those reports on grounds of them being, for instance, collusive or forged and fabricated.



This has, admittedly, not been done. Additionally, the contention that even with regard to the finding that the appellant had not informed the authorities with regard to his absence, needed to be verified from the records of the concerned authorities, has not been done. The other important issue is that the appellant had been noticed and show cause issued to him with regard to absence for various periods and after that the authorities had permitted him to join and also draw his salary. The contention of learned counsel for the appellant that such charges once having been considered by the authorities and the appellant having been allowed to join and salary given; subsequently, once again, the same charge(s) cannot be revived again, cannot be brushed aside.

15. Learned counsel for the State has not been able to point out any circumstance or show any document for such periods for which the appellant was absent earlier were never considered and could have formed one of the charges in the departmental enquiry which has been conducted against the appellant. Further, on an overall circumspection of the matter, the Court finds that the only charge against the appellant in essence is that he was wilfully absconding from duty and not joining. In the considered opinion of the Court, whether this is a reason for visiting the appellant with the extreme punishment of dismissal



from service without any benefits whatsoever, requires deeper scrutiny. It is not a charge against the appellant that he was either corrupt or in the course of his duty he had committed same offence or his conduct as a police constable towards his duties was ever found wanting or there was a complaint by any person. We pause here to indicate that we are alive to the probability of the existence of various circumstances, which may justify the delinquent being removed from service and ending the master-servant relationship. However, we note that various contingencies are provided like dismissal from service, compulsory retirement or termination with full retiral benefits. This itself indicates that even in a case where the delinquent is not to be continued in service, the authorities are required to apply their mind as to which option would be the most appropriate punishment.

16. In the instant case, we find that the most extreme punishment of dismissal from service is not, in our view, proportionate to the charges, as indicated hereinabove and evincible from the records which are before us.

17. In this event, the order of dismissal dated 13.07.2021; the appellate order dated 26.09.2018; as well as the memorial order dated 03.06.2019 are set aside. Consequently, the



order dated 13.07.2021 passed in CWJC No. 3836 of 2020 by the learned Single Judge, is also set aside.

18. The matter is remitted to the disciplinary authority to pass a fresh reasoned order, in accordance with law. However, while the order of dismissal from service which has been set aside shall not be passed against the appellant, we specify that we have not examined the rival contentions on merits. We clarify that the order, to be passed now by the disciplinary authority afresh in terms of our direction, shall be deemed to have been passed on the date on which the order of dismissal (which has been set aside) was passed. The appellant shall not be entitled to claim any equity or payment on the ground that a fresh order has been passed later, after remand from the Court.

19. *Ergo*, this Letters Patent Appeal is allowed *pro tanto*.

(Ahsanuddin Amanullah, J.)

(Anjani Kumar Sharan, J.)

P. Kumar

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