

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15276 of 2018

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Ajay Kumar Son of Late Sipahi Rai, Resident of Village-Bairiya, P.O. Bakhari, P.S.-Kotwa, District-East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Bihar, Patna
2. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General, Tirhut Range, Muzaffarpur.
5. The Superintendent of Police, Hajipur, Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Umesh Chandra Verma, Advocate
For the Respondent/s : Mr Md Fazle Karim, AC to SC I

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

5 28-11-2022 Heard learned counsel for the petitioner and the respondents.

2 The petitioner was a Constable in Sitamarhi. He was transferred to Vaishali district in the year, 2007. For basic training, he was directed to join at the Bhojpur district under letter dated 03.04.2010 bearing No 552595. The petitioner joined at Bhojpur district on 16.04.2010 and, thereafter, has been absent from duties up till 02.04.2016. It is not in dispute that on account of his unauthorized absence, the petitioner's salary was stopped in May, 2010. He was placed under suspension and departmental proceeding was conducted against him culminating in his dismissal under order dated 07.06.2013



by the Superintendent of Police, Vaishali. The petitioner has filed an appeal against the order dated 07.06.2013 on 20.04.2016 which has been rejected by the appellate authority - Deputy Inspector General, Tirhut Range, Muzaffarpur under order dated 25.07.2016 by finding the same to be barred by limitation prescribed for filing an appeal under Rule 852 of the Bihar Police Manual. Under Rule 852 of the Bihar Police Manual, time is prescribed for filing the appeal is within six months from the date on which the concerned person is informed and the order against which he is filing the appeal.

3 Learned counsel for the petitioner submits that the petitioner was suffering with mental disorder and was under treatment from 20.04.2010 to 02.04.2016. He, thus, submits that the appellate order is unsustainable. There is also an averment in the writ petition that the notices dated 31.05.2010, 20.08.2010 and 29.09.2010, issued at his permanent/native address, were not brought to his notice as they were not received by any of his relatives.

4 The learned State Counsel has submitted that from the order itself, it is apparent that at least three notices were issued to the petitioner during the course of proceedings. The petitioner has chosen not to respond to the same and not filed



any statement of defence, or appeared in the proceedings. He has also not sent any intimation during the seven years period, during which he claims to be suffering from mental disorder. The plea of being suffering from mental disorder is an afterthought and not factually and legally tenable.

5 Considering the rival submissions, this Court would find that the petitioner has enclosed some handwritten prescriptions along with his appeal which runs into three pages and shows intermittent consultations with a doctor on nine dates within the seven years period during which he claims to be suffering from mental disorder. The certificates do not show that he was given any in-patient treatment, or that he was admitted to the Hospital. The plea regarding notice not being received by any relatives of his family on his native address taken in the writ petition is not supported by the averments made by him in his appeal wherein no such plea has been raised by the petitioner. The order of punishment/dismissal has not been assailed by the petitioner by stating in his appeal that he was deprived of opportunity due to non-service of notice. In fact, he has dealt with the punishment on merits trying to discredit the procedure adopted and raising plea of non-compliance with principles of natural justice. The plea



regarding non-compliance of principles of natural justice have to be viewed in the aforesaid background where petitioner has chosen not to avail the remedy granted by three notices and remained unauthorizedly absent from duties in the police force for nearly seven years.

6 This Court would, thus, observe that in view of the petitioner's refusal to respond to the notices and participate in the proceedings, the petitioner would be deemed to have waived the requirement of natural justice and is estopped from raising such plea in view of decision of this Court in the case of ***Board of Directors, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi, (2008) 11 Supreme Court Cases 502.***

7 The other plea advanced by the petitioner regarding his illness to justify the delay in filing appeal, this Court would find that from perusal of the prescriptions, it is more than obvious that the same cannot be relied upon to justify the petitioner's absence for seven years as it does not show that he was being treated for any such mental disorder, which incapacitated him from responding to the notice, sending information to someone to his Department regarding his illness or from filing appeal within time. The prescriptions merely



shows intermittent consultations with the doctor which appears to have been taken, that also on nine dates in the seven years period.

8 This Court, therefore, does not find any infirmity with the order of punishment dated 07.06.2013 issued by the Superintendent of Police, Vaishali or the appellate order dated 25.07.2016.

9 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

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