

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23155 of 2012

Meraj Ansari Son Of Md. Shahid Ansari Resident Of Village- Hasanpura,
P.S.- Marhourah, District- Saran Bihar

... .. Petitioner/s

Versus

1. The Union Of India and Ors Govt. Of India, New Delhi
2. The Inspector General Of Police, Special Sector, Central Reserve Police Force, Raipur Chhatisgarh
3. The Deputy Inspector General Of Police, Central Reserve Police Force, Bhopal
4. The Commandant, Battalion 80, Central Reserve Police Force, Jagdalpur Chhatisgarh
5. The Assistant Commandant, Battalion 80, Central Reserve Police Force, Jagdalpur Chhatisgarh

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Adv Mr. Arvind Kumar, Adv Mr. Rajesh Kumar, Adv
For the Respondent/s	:	Mr. Radhika Raman, CGC Mr. Awadhesh Kr. Pandey (Sr. CGC)

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 23-06-2022 Heard learned counsel for the petitioner as well as

learned counsel for Union of India.

Writ petitioner has been filed for setting aside the order passed on the petitioner's revision by the Office of Inspector General of Police, Central Police Reserve Force (CRPF), Ranipur on 12.07.2012 affirming the order of the Commandant dated 06.09.2011. The order of the Commandant dated 06.09.2011 dismissing the petitioner from service has also been challenged.



The petitioner was working as a constable in respondent forces. He has been dismissed on the charge of overstaying beyond the leave period for a total period of 182 days. The short facts, as per the pleadings, are that he was granted 20 days EL (Earned Leave) with effect from 06.09.2010 with permission to avail between 05.09.2010 and 26.09.2010 both being Sundays. He was required to report on 26.09.2010. The petitioner, however, remained on unauthorised overstayed leave without any permission of the competent authority. On 06.10.2010, he submitted a communication to the authorities that on account of some domestic problems, he could not join the duties and requested for extension of leave.

At this juncture, this Court would observe that though the leave has lapsed on 26.09.2010, his first communication as per pleadings was sent to the authorities on 06.10.2010.

The respondents have stated that they have issued a letter under registered post calling upon the petitioner to join the duties. The same was returned undelivered with the post-script that the petitioner refused to receive it. There are reference to similar other communications issued against the petitioner.

The petitioner, thereafter, between 26.09.2011 and 26.12.2011 again overstayed leave for 92 days. The authorities



are of the opinion that petitioner was habitual deserter since repeatedly he was overstaying leave and trying to sustain his unauthorised absence by raising a plea of domestic problems.

These facts have been observed by this Court keeping in background the fact that the petitioner was a member of para-military forces which called upon him to maintain high standard of discipline and devotion towards duty.

The petitioner in the writ petition has made statement that the post-scripts had been inscribed by the postal authorities on account of some kind of enmity with the postal authorities in his native place. The alleged several communications had never been served on him. It has also been submitted that there were domestic problems, including the illness of the petitioner's mother and therefore the same was a reason which should be considered as sufficient cause by the authorities; and the overstaying from leave (OSL) should have been considered favorably to the petitioner and no action should have been taken.

In response to the averments made in the writ petition, the authorities have filed a specific counter-affidavit. Paragraph 15 of the counter-affidavit states as follows:

“15. That in reply to the statement made in



paragraph no. 1 of the writ petition, it is submitted that the same is incorrect and denied. As per DE proceedings the memorandum of articles of charged dated 21.01.2011 was received by petitioner himself on 29.01.2011, which is available on record. Further after petitioner overstayed from 15 days CL w.e.f. 04.03.2011 to 24.03.2011, the EO had sent registered letters directing the petitioner to appear before him for recording statements etc. and thereafter sent copy of statements of PWs, but most of registered letter sent by IO were received back undelivered with the remarks of Postal authority "Addressee refused to receive it", which are available on the record.

Further it is stated that before passing final order on DE the Disciplinary authority had forwarded Enquiry report to petitioner vide registered letter No. P.VIII-1/2011-EC.II-80 dated 13.08.2011 with direction to appear in person and submit or sent through post, representation if any, in his defence within 15 days from the date of receipt of said letter but he did not do any thing and remained OSL. Though his mother was ill as per documents submitted by petitioner, but he had never



informed to his employer/unit or requested for extension of leave with full proof. Moreover he should be well aware that his mother's treated started w.e.f. 03.03.2011 whereas DE was conducted against him in connection with 92 days unauthorized OSL w.e.f 26.09.2010 to 26.12.2010. Hence plea of petitioner required to be rejected being baseless/fabricated.”

It should be relevant to mention here that there is no rejoinder to the averments made in the counter-affidavit and the facts stated in paragraph 15 are not denied and disputed.

In view of the fact that the petitioner was given an opportunity to state his case/defence in the proceedings by service of charges, which opportunity he has chosen not to avail, the Court would consider taking note of judgment of the Apex Court passed in the case of ***Board of Directors, Himachal Pradesh Transport Corporation & Anr. vs. K.C. Rahi*** reported in **2008 (11) SCC 502**.

This Court would consider it useful to reproduce paragraphs 7 and 8 of the judgment which read as follows:

“7. The principle of natural justice cannot be put in a straitjacket formula. Its application depends upon the facts and circumstances of each case. To sustain a



complaint of non-compliance with the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance with principle of natural justice.

8. In the instant case we have been taken through various documents and also from the representation dated 19-10-1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. In the representation submitted by him on 19-10-1993 the subject itself reads "DEPARTMENTAL ENQUIRIES". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is no excuse much less by a person who is a law graduate himself."

This Court has already observed that the petitioner has chosen not to participate in the proceedings and this is a case where plea of natural justice is deemed to have been waived by



the petitioner. He is, therefore, estopped from alleging violation of the principle of natural justice in the proceedings leading to the impugned punishment. The petitioner has neither participated in the proceedings, nor sent any application for extension of leave. Having availed the period of leave, he has overstayed on his own which manifests a very callous approach, may be for whatever reasons. Being a member of a paramilitary forces, the petitioner was expected to maintain higher degree of discipline and commitment towards his duty which clearly has not been done in the instant case. No grounds are made out for interfering with the impugned punishment of termination.

This writ application is dismissed.

(Madhuresh Prasad, J)

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