

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18523 of 2018

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Ravi Kumar Singh Son of Sri Mithilesh Singh, resident of Village- Amiour Bigha, P.S.- Madanpur, District- Aurangabad, presently residing at Flat No. 117, Housing Colony, P.S.- Dhanbad, District- Dhanbad.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Inspector General of Central Reserve Police, Force, Patna.
3. The Deputy Inspector General of Central Reserve Police Force, Patna.
4. The Commandant, 205, Cobra Battalion, Barwadih, Barachatti, Gaya, Bihar.
5. The Deputy Commandant, 205, Cobra Battalion, Barwadih, Barachatti, Gaya, Bihar.
6. The Assistant Commandant, 205, Cobra Battalion, Barwadih, Barachatti, Gaya, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Adv Mr. Kumar Kishan, Adv
For the Respondent/s	:	Mr. Ravindra Kumar Sharma, Adv Mr. Awadhesh Kumar Pandey, Adv

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 08-08-2022

Heard the parties.

2. The petitioner seeks quashing of office order dated 23.08.2017 issued by the Commandment, 205, Cobra Battalion, whereby and whereunder the petitioner has been removed from service. The petitioner also seeks reinstatement with all consequential benefits.

3. The brief factual background is that petitioner was appointed as a constable (general duty) on 20.06.2012 and



posted under 205, Cobra Battalion at Barachatti in the district of Gaya. Charge memo dated 04.08.2016, containing three charges, was served upon the petitioner. The charges in the charge memo were; (i) of availing 'out-pass' and leaving the battalion without seeking permission for 'out-pass' in accordance with the existing rules, returning after the period prescribed for 'out-pass' in an inebriated condition. (ii) After returning to the camp, when the Deputy Commandment (Admin) questioned him, he got infuriated and hurled abuses against his superior authorities and his colleagues, and (iii) He climbed on the railing of the roof top of the four storey building and threatened that he would commit suicide by jumping from the roof top, again while hurling abuses.

4. In spite of best efforts to pacify the petitioner, petitioner did not relent. The petitioner's misconduct was reported to the local police also leading to institution of FIR No. 179 of 2016 on 28.05.2016 itself at the Barachatti police station in District Gaya. Petitioner was also arrested; and the criminal proceedings arising out of Barachatti P.S Case No. 179/2016, is pending.

5. Petitioner claims to have submitted his reply to the Inquiry Officer, copy of which has been enclosed as Annexure



-8 to the writ petition. The Inquiry Officer found the charges to be proved and submitted his inquiry report on 13.03.2017. Disciplinary Authority agreed with the findings of the Inquiry Officer and exercising powers under Rule 27 of the CRPF Rules 1955 imposed the penalty of removal from service upon the petitioner vide office order dated 23.08.2017, which is impugned in the instant writ petition.

6. It is specific case of the respondents in the counter-affidavit, that the petitioner has served in the Force for three years. He very well knew that DIG (Admin) in the office of the Inspector General of police, Cobra Sector, CRPF, New Delhi (hereinafter referred to as 'DIG (Admin) New Delhi') was his Appellate Authority. However, the petitioner sent his appeal dated 01.09.2018, to DIG, Range, CRPF, Patna (hereinafter referred to as 'DIG, Range, Patna') without mentioning his full address and without sending a copy of the same to 205, Cobra Battalion, as required under the procedure. The petitioner did not prefer his appeal in accordance with procedure prescribed.

7. The petitioner's counsel has submitted that the inquiry was conducted without considering his reply to the charge memo and behind his back. The proceedings and the resultant punishment of petitioner's removal from service, are



thus unsustainable. The petitioner had made an application for 'out-pass' on the fateful day(28.05.2016), which was duly recommended by the competent authority, which is evident from copy of the application (Annexure - 3 of the writ petition). Lastly, it is submitted that copy of the inquiry report was not served on the petitioner to enable him to consider the same and submit his comments on the inquiry report. Petitioner's counsel has thus alleged violation of law as laid down in decision of the Apex Court in the case of ***Managing Director, ECIL, Hyderabad v. B. Karunakar*** reported in (1993) 4 SCC 727. It is submitted that these lapses are sufficient to conclude that the proceedings were conducted against the petitioner in gross violation of principles of natural justice and the prescribed procedure for conduct of inquiry against the petitioner.

8. The specific stand of the respondents in the counter-affidavit, is that the petitioner has left the camp without obtaining 'out-pass' in accordance with the settled and established procedure. He has returned to the camp in an inebriated condition. He has indulged in hurling abuses against his superiors and colleagues within the camp and created commotion by climbing on the roof top of four storey building and threatening to commit suicide by jumping from the roof.



The petitioner has, by his actions, undermined the atmosphere of discipline in the camp of the force. He has exhibited utter disregard for the force, its member, and his own superiors. Such conduct brings the entire camp to disrupt and jeopardizes the sense of discipline, which is a major strength for any armed and uniform force. The petitioner's actions are unbecoming of a member of the force and his continuance in the force is undesirable by any standards.

9. The petitioner did not respond to the charge memo. He has not submitted any written statement of defence. The petitioner was afforded all opportunities to state his defence, but he has chosen not to participate in the proceedings by raising any defence before the Inquiry Officer. The petitioner's utter disregard for rules, procedure, discipline, is apparent also from the fact that he has preferred his appeal, but not before the competent authority, and not in accordance with the rule. It is submitted that since the petitioner has chosen not to file his written statement denying the charges, he is estopped from alleging that he was not afforded any opportunity, or that the inquiry was conducted behind his back in violation of the principles of natural justice. The punishment has been imposed by following the procedure under Rule 27 of the Central



Reserve Police Force Rules, 1955. Since, the procedure has been followed and petitioner has chosen not to respond to the charge memo, this Court may not consider the petitioner's factual submission on the merits of the charges, in view of the scope of judicial review, which is limited to the decision making process and not to the decision itself.

10. Insofar as the petitioner's claim that his 'out-pass' request was approved by the competent authority, it is submitted that the petitioner has not followed the procedure for 'out-pass'. The petitioner's application was merely forwarded to the competent authority; and without prior permission/sanction of 'out-pass' by the competent authority, the petitioner left the unit headquarters on 28.05.2016 to report back after the otherwise prescribed time limit (2000 Hours).

11. On consideration of the rival submissions, this court would observe that Annexure purporting to be the petitioner's reply to the charge memo (Annexure – 6), cannot be accepted as being the petitioner's reply to the charge memo. The same does not contain any reference to the charge memo nor does it contain any response to the charges communicated to the petitioner vide charge memo dated 04.08.2016. There is also no date mentioned on Annexure-6, from which it can be concluded



that the same was ever submitted in response to the charge memo.

12. In view of specific denial of the respondent-authorities in the counter-affidavit that petitioner did not respond to the charge memo, this Court is not inclined or persuaded to accept that Annexure-6 is petitioner's response to the charge memo.

13. The Petitioner's appeal (Annexure – 8), from bare perusal, appears to have been preferred before the DIG, Range, Patna, whereas it is a specific and undisputed stand of respondents in their counter-affidavit that his appellate authority was DIG (Admin), New Delhi. The appeal was also required to be submitted through his last unit (205, Cobra Battalion, CRPF), which has not been done. This Court is thus inclined to accept submission of the respondent-authorities to the effect that the petitioner has not preferred any appeal in accordance with Rules.

14. The specific averments regarding non-submission of reply/written statement of defence to the charge memo and non-filing of appeal before the appellate authority, are met with bald denials by the petitioner in his rejoinder by merely stating that the statements are misconceived and incorrect. From copy



of appeal (Annexure – 8), it is apparent that the same was sent by post on 02.08.2018 from the Post-Office situated in Patna High Court and has been addressed to the DIG, Range, Patna.

15. The stand of the respondents that the petitioner has chosen not to avail the opportunity granted before the conducting officer or to prefer appeal in accordance with rules, therefore, in the opinion of this Court, based on the documents, is correct.

16. The law is well settled that when an individual chooses not to avail the opportunity as required by the principles of natural justice, it is considered that he has waived his right and is estopped from assailing the decision making process on the ground of non-compliance with the principle of natural justice.

17. Judgment of Apex Court in this regard, in the case of ***Board of Directors, Himachal Pradesh Transport Corporation & Anr. v. K.C. Rahi*** passed in (2008) 11 SCC 502, is worth taking note of at this juncture. Relevant extracts of the judgment are being reproduced;

“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.”

18. The Court is, therefore, of the considered view that the petitioner has not availed the opportunities granted to him before the conducting officer by not responding to the charge



memo. He has also not availed remedy of appeal before the Appellate Authority as prescribed in the Rules.

19. This Court would, therefore, conclude that the petitioner has waived his right/s to allege violation of principles of natural justice or that the procedure was not followed.

20. Before parting with the judgment, this Court would observe that as member of a disciplined force, petitioner was expected to follow the rules, his expected conduct was of a very high degree of discipline. While dealing with findings of act of lapse committed by members of the Sima Suraksha Bal (SSB), the Hon'ble Apex Court recently in the case of **Anil Kumar Upadhyay v. Director General, SSB & Ors.** passed in **2022 SCC OnLine SC 478** has considered this aspect of the matter. Extract of paragraph 23 of the judgment which is useful in the instant case and is being reproduced.

“23. As a member of the disciplined force - SSB, he was expected to follow the rules. He was apprehended inside the Mahila Barrack by six female constables. As observed by this Court in the case of *Diler Singh (supra)*, a member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not



allow his feelings to fly in a fancy. The nature of misconduct which has been committed by the appellant stands proved and is unpardonable. Therefore, when the disciplinary authority considered it appropriate to punish him with the penalty of 'removal from service', which is confirmed by the appellate authority, thereafter it was not open for the learned Single Judge to interfere with the order of punishment imposed by the disciplinary authority."

21. The totality of the facts/circumstances, viewed keeping in background the settle legal position arising out of two decisions of the Hon'ble Apex Court in the case of ***K.C. Rahi*** (supra) and ***Anil Kumar Upadhyay*** (supra), this Court is clearly of the opinion that punishment of removal from service does not require any interference.

22. Writ petition is devoid of merit and is dismissed.

(Madhuresh Prasad, J)

SUMIT/-

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