

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2972 of 2021

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Biraju Paswan @ Birjoo Paswan @ Biraju Kumar Paswan, Son of Late Surendra Paswan, Resident of Village- Belmohan, P.S. - Phulparas, District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Bihar, Patna.
2. The D.G.P, Bihar Military Police, Bihar, Patna.
3. The I.G., Bihar Military Police, Bihar, Patna.
4. The D.I.G. Bihar Military Police, 06 Muzaffarpur.
5. The Commandant, Bihar Military Police - 06, Muzaffarpur.
6. The S.S.P., Madhubani.
7. The Conducting Officer 1st Bihar Military Police - 15.
8. The Conducting Officer 2nd Bihar Military Police - 15.
9. The Officer-In-Charge, Madhepur Police Station, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar Jha, Advocate
For the Respondent/s : Mr.Anil Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 26-04-2022

Heard learned counsel for the petitioner and learned
counsel representing the respondents.

Petitioner in the present case is seeking the
following reliefs:-

*“(i) For setting aside the memo no.119/SA 2110
dt. 27.1.2020 passed by the respondent no.4*



(D.I.G.) whereby and where under the respondent concerned without considering the previous application of petition given on 25.07.2015 in light of order dated 1.7.2015 passed by the Hon'ble High Court, Patna in M.J.C. No.878/2015 arising out of C.W.J.C. No.6552/2014, refused the prayer of petitioner merely on the ground of limitation.

(ii) For setting aside the order dated 12.2.2014 passed by the respondent no.5 (Commandant) vide memo no.16/GO whereby the respondent concerned without applying his judicial mind as well as without considering the reply of petitioner, terminated him from his service without giving proper opportunity.

(iii) For issuance of direction to the respondent authorities to reinstate the service of petitioner as his original cadre after giving all such consequential benefits to which petitioner is entitlement as per service code."

The admitted facts of the case are as under:-

The petitioner who was appointed as constable in Bihar Military Police No.-15 had filled up a declaratory form



no.101. In column no.7 of the said form, he was required to disclose as to whether he had got any criminal case pending against him. The petitioner declared that he had no criminal antecedent. This form was filled up by him on 01.09.2011. Later on, he was served with a notice wherein it was alleged that he had concealed material fact in respect of his pending criminal case. It was found that the petitioner was an accused in Madhepur P.S. Case No.87 of 2011 registered on 28.06.2011 for the offences alleged under Sections 395 and 397 I.P.C. In the said case, he was arrested on 06.07.2011 and was released on bail later on. These facts were not disclosed in form no.101.

The service of the petitioner was, therefore, terminated by the impugned order as contained in Annexure-6.

Against Annexure-6, the petitioner preferred a writ application before this Court giving rise to CWJC No.6552 of 2014. In MJC No.878 of 2015, arising out of the said writ application, the petitioner was given an opportunity by a learned Single Judge of this Court to file an appeal before the competent authority within a period of four weeks and a direction was issued that if such an appeal is preferred the same will be considered by the appellate authority.

Again it is not disputed that the petitioner did not



file an appeal as no proof of filing of such appeal could be placed before the appellate authority who considered the appeal preferred by the petitioner some time in the year 2019. The appellate authority took note of the fact that the petitioner had been terminated from service on the allegations which are duly discussed by the disciplinary authority and beside that he had failed to file his appeal within the period provided by the learned Single Judge of this Court. In ultimate analysis, the appellate authority dismissed the appeal.

In the aforementioned background, learned counsel for the petitioner has submitted before us that in course of disciplinary proceeding the petitioner was not given proper opportunity to represent his case. It is submitted that he could not cross-examine the witnesses who turned up in course of departmental proceeding as he had no opportunity for the same. It is his further submission that though the petitioner had filed a show cause but the same was also not considered.

Learned counsel for the petitioner has disputed the finding of the appellate authority that no appeal was preferred within the given period, however, we find from the record that the appellate authority has categorically recorded in the order (Annexure-11) that the appellant failed to produce any material



showing filing of appeal within the given period.

On the other hand, learned counsel for the State submits that the case of the petitioner is an open and shut case. The principles of natural justice cannot be put in a straight-jacket formula and in the facts of the present case where the service of the petitioner had been terminated after finding that the petitioner had concealed material facts with regard to his criminal antecedent while filling up form no.101, no fault may be found with the impugned orders.

We have heard learned counsel for the petitioner and learned counsel for the State and have given anxious consideration to the submissions as well as the materials available on the record. A perusal of the records would show that there is an admitted fact that the petitioner was an accused in a criminal case, he was arrested and had been put behind the bar from where he was released on bail, all these facts were well within the knowledge of the petitioner while filling up form no.101 but he deliberately concealed that material fact from his employer. If this is an admitted fact then we are in agreement with the submission of learned counsel for the State that the impugned orders need no interference.

This Court sitting in its extraordinary writ



jurisdiction under Article 226 of the Constitution of India is exercising its power to grant discretionary reliefs, but in this case this Court would not be inclined to exercise its discretion in favour of the petitioner on the admitted facts of this case.

This writ application has, thus, no merit. It is dismissed accordingly.

(P. B. Bajanthri, J)

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2022
Transmission Date	

