

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10065 of 2013

Constable No. 911120653 Hawaldar, G.D. Datta Singh @ Dhatta Singh, S/o Late Sri Handi Ram R/O Village- Bajaheda, P.O.- Mudoti, P.S.- Nagar, District- Bharatpur Rajasthan

... .. Petitioner/s

Versus

1. The Union of India through Home Secretary, Government of India, New Delhi.
2. The Inspector General, CRPF, Bihar Sector, Patna, Bihar
3. The Deputy Inspector General Administration, Bihar Sector, Patna
4. The Dig, CRPF, Muzaffarpur Range, Bihar
5. The Dig, CRPF, Agartala Range, Tripura
6. The Commandant, 190 Battalion, CRPF, Chatra, Jharkhand

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Akshay Ashish, Advocate Mr. Ramanuj Tiwary, Advocate
For the Respondent/s	:	Mr. Awadhesh Kumar Pandey, Sr. Panel Counsel Mr. R.K. Sharma, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 31-08-2022

Heard learned counsel for the respective parties.

02. In the instant petition, petitioner has prayed for following reliefs:-

“(i) That the order dated 10.01.2013 passed by respondent no. 2 I.G. CRPF, Bihar sector contained in annexure-8 may be quashed.

(ii) That the order dated 12.07.2012 passed by respondent no. 5 DIG CRPF, Agartala Range, Tripura contained in annexure-6 may be quashed.

(iii) That the order dated 10.01.2013 passed by respondent no. 6



commandant 190 Battalion, CRPF, contained in annexure-5 may be quashed.

(iv) That any other relief or reliefs may be allowed which will be just proper and equitable on the opinion of this Hon'ble court."

03. The petitioner joined as Constable in C.R.P.F on 08.07.1991 and he has earned promotion to the post of Head Constable on 15.05.2010. For remaining unauthorized absent for a period of 13 days read with earlier absent of 36 days he was charge-sheeted on 17.09.2011 and it was concluded in imposition of penalty of compulsory retirement on 20.03.2012.

04. Feeling aggrieved and dissatisfied with the order of compulsory retirement, he has exhausted remedy of appeal and revision. In both the proceedings, he has suffered orders on 12.07.2012 and 10.01.2013 respectively. Thus, he has presented this petition.

05. Learned counsel for the petitioner submitted that having regard to the alleged charge imposition of major penalty of compulsory retirement would be too harsh. Therefore, imposition of penalty of compulsory retirement be modified to any other minor penalty and he shall be reinstated and extended all service and monitory benefits.

06. *Per contra*, learned counsel for the respondent resisted the aforesaid contention and submitted that having regard to



the alleged charge that he remained unauthorized absent for 13 days and he has committed similar misconduct in the past and remained unauthorized absent for 36 days, therefore, there is no infirmity in the order of the disciplinary, appellate and revisional authorities. Hence, no interference is called for.

07. Heard learned counsel for the respective parties.

08. The petitioner joined service on 08.07.1991 as a constable and has earned promotion as post of Head Constable on 15.05.2010. For a period of 13 days absent read with the past misconduct of remaining unauthorized absent for 36 days, he has been punished with a penalty of compulsory retirement on 20.03.2012. and it is affirmed by next higher authorities.

09. Having regard to the length of service rendered by the petitioner from 08.07.1991 and the fact that he remained unauthorized absent for 13 days and similar unauthorized absent for a period of 36 days in the past and imposition of major penalty of compulsory retirement would be too harsh. In the identical circumstances, Hon'ble Apex Court in the case of **Amrendra Kumar Pandey vs. Union of India & Ors.** reported in 2022 Live Law (SC) 600 held as under:-

“27. The reliance placed by the learned Counsel appearing for the respondents of the decision of this Court in the case Satgur Singh (supra) is of no



avail. It was a case in which the appellant failed to furnish any explanation of his absence from duty on seven occasions. On facts, this Court took the view that as the absence from duty was on several different occasions for which he was imposed punishment of imprisonment, the order of discharge could not be said to unjustified.

40. Having regard to the nature of the misconduct alleged against the appellant we are of the view that the ends of justice would be met if we set aside the order of discharge and treat the appellant herein to have been in service till the time, he could be said to have completed the qualifying service for grant of pension. We are inclined to pass such an order with a view to do substantial justice as there is nothing on record to indicate that the nature of the misconduct leading to the award of four Red Ink entries was so unacceptable that the competent authority had no option but to direct his discharge to prevent indiscipline in the force.”

10. Also, Hon’ble Apex Court in the case of Union of India & Anr. vs. R. K. Sharma (Civil Appeal No. 4059 of 2015) held as under:-

“11. As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by



imposing some lesser but major penalty upon the respondent.

*12. The misconduct attributed to the respondent is based on the charge-memo dated 04.12.1998 with respect to which he was dismissed from service in the year 2000. We, therefore, do not deem it necessary to remit the case to the disciplinary authority after such a long spell of 22 years. Instead, we are inclined to invoke our power under Article 142 of the Constitution, keeping in mind the doctrine of proportionality and with a view to do complete justice between the parties. This Court has utilized Article 142 on numerous occasions in the past, such as in *Hind Construction & Engineering v. Their Workmen*¹ and *Management of the Federation of Indian Chambers of Commerce v. Their Workmen*² to ensure that the punishment meted out to a public sector employee for a violation of the applicable service laws/rules is not disproportionate to the infraction that he/she has committed. The doctrine of proportionality is employed to examine whether the penalty that is imposed upon is congruent with the charges brought against the delinquent employee.”*

11. In the light of these facts and circumstances, orders of the disciplinary, appellate and revisional authorities (Annexure- 5, 6 and 8) are set aside and matter is remanded to the disciplinary authority to impose lesser penalty and extend all monitory and service benefits. The above exercise shall be completed within a period of three months from the date of receipt of this order.



12. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

