

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.293 of 2020

=====

Bhola Chaudhary Son of Late Ramchandra Choudhary Resident of Village-
Harigaon, P.S.- Belaganj, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Home,
Government of Bihar, Patna.
2. The Home Commissioner (Police) Government of Bihar, Patna.
3. The Director General of Police Bihar, Patna.
4. The Inspector General of Police Patna Division, Patna.
5. The Deputy Inspector General of Police Magadh Range, Gaya.
6. The Deputy Inspector General of Police Aurangabad Range, Aurangabad.
7. The Superintendent of Police Jehanabad.
8. The Inspector of Police-cum- Conducting Officer Ghoshi Anchal,
Jehanabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ravindra Nath Dubey
For the Respondent/s : Mr. Saroj Sharma, AC to AAG-3

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-08-2022

1. While the petitioner, a constable, was undergoing training at the primary training center at Dehri, he availed four days leave with effect from 09.05.1988. The petitioner did not return after the leave period and overstayed beyond the leave period for 42 days. He has admittedly returned on 24.06.1988.

2. With the above noted undisputed facts in the background, the petitioner was proceeded against for his overstayal of leave without any intimation to the authorities. The petitioner assailed the order of dismissal in CWJC No.



13374 of 2001. The writ application was allowed on 23.11.2007 with a direction to the authority to issue fresh notice to the petitioner and thereafter to proceed in the matter.

3. As a result of this exercise, the petitioner was served with an order of punishment dated 20.06.2008, which again was challenged in CWJC No. 18164 of 2009. The Court again interfered on the ground that copy of inquiry report was not served upon the petitioner.

4. The matter was, thus, remanded back. The petitioner was served with second show-cause along with copy of inquiry report. He submitted his explanation whereafter he has again been punished.

5. This punishment was again assailed in CWJC No. 13943 of 2010. This Court found that instead of taking a decision on the petitioner's reply to second show-cause, the Superintendent of police got further inquiry conducted; and based on such inquiry, the petitioner was punished on the basis of the second inquiry report. This Court, therefore, interfered with the order of punishment again. The dismissal order was found to be unsustainable, since there were two inquiry reports; one prior to second show cause notice, and the second after petitioner's reply to show cause notice. It is under this



circumstance that the Court interfered with the dismissal order and vide order dated 09.05.2018 passed in CWJC No. 13943 of 2010, directed for fresh inquiry.

6. Thereafter, proceedings have been conducted against the petitioner afresh under charge memo dated 30.06.2018. After the proceedings were conducted, the petitioner has again been found to be guilty of the charges and has again been visited with the punishment of dismissal from service vide order dated 05.11.2018. His appeal against the said order has been rejected by the Deputy Inspector General of Police, Magadh Range vide order dated 04.02.2019.

7. The learned counsel for the petitioner has submitted that the order of punishment is unsustainable. He has submitted that the authorities have not considered the medical certificate dated 24.06.1988 (Annexure 5 to the writ petition), from which it is evident that the petitioner was undergoing treatment for fever and cough with effect from 12.05.1988 to 24.06.1988. Immediately on being declared fit to resume his duty, he has re-joined on 25.06.1988.

8. The learned State counsel, on the other hand, has submitted that other than the handwritten medical certificate dated 24.06.1988, the petitioner has not produced any



documents in support of his treatment. He has also not produced any material to show that he made any endeavours to intimate the authorities regarding his claim of illness/treatment. In view thereof, there was no material basis on which the petitioner's plea of treatment for illness could be accepted by the authorities.

9. Upon hearing the rival submissions, this Court had put a specific query to the petitioner counsel; whether the petitioner had submitted any documents in support of his treatment, including prescription etc, and whether he had produced any material to show that he had taken any steps to intimate the authorities after lapse of his four days leave period and during the 42 days, when he was overstaying the leave.

10. Since no material was placed on the record by the writ petitioner, this Court, considering the fact that the proceedings arise out of alleged lapse committed by the petitioner as far back as in the month of May-June 1988, directed the State counsel to present with the files relating to the inquiry in question. Both parties have gone through the file and this Court found that apart from the handwritten medical certificate dated 24.06.1988, no other material has been submitted by the petitioner either before the authorities or in this court in the proceedings.



11. Another aspect of the matter is that the petitioner's dismissal is based on his 42 days overstayal of leave, which overstayal stands admitted. The only issue which the petitioner is harping upon is that he has sufficient cause for overstayal of leave. In support of such Plea, petitioner has not placed on record anything other than the handwritten medical certificate dated 24.06.1988. There is no other document or prescription in support of the treatment which the petitioner claims to have received. The handwritten certificate also does not advise bed rest, though it advises rest.

12. In these circumstances, the least that was required of the petitioner, who was undergoing training, being a member of the police force, was that he should have intimated the authorities concerned, which apparently, he has not done. The petitioner has not been able to make out a case that any prejudice has been caused to him in the inquiry. Period of overstayal is admitted. There is no Material in the inquiry or before these proceedings to support the petitioner's plea that he was undergoing treatment during the period, or that he has ever intimated the authorities regarding his claimed illness.

13. Such conduct of the petitioner, keeping in background the fact that he was undergoing training at the



relevant time as a member of the police force, this Court would only observe that at least the petitioner was required to take due care of sending intimation to the authorities regarding his illness based on some reliable material in support of his illness. Since, there is no such material on record, this Court would observe that petitioner has not been able to make out a case for interference with the impugned order.

14. The writ application is devoid of merit and is accordingly dismissed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.08.2022.
Transmission Date	NA

