

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.925 of 2023

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Pankaj Kumar Yadav Son of Madan Prasad Yadav Resident of village-
Tikuliganj, P.S.- Kahalgaon, District- Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Director General of Police North Division Police Headquarter,
Patna, Bihar.
4. The Deputy Inspector General, Bihar Military Police Office, North Zone
Muzaffarpur.
5. The Commandant, Bihar Military Police 11, Jamui.
6. The Enquiry Authority cum 'A' company Commander, Bihar military Police
11, Jamui.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Pravin Kumar Sinha, Advocate
For the Respondent/s : Mr.Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 24-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. Petitioner, in the present case, is seeking the
following reliefs:-

“(i) To set aside the order dated 15.10.22/18.10.22 passed in
Appeal application (Memorial) by the Director General of
Police, Bihar, Patna whereby and whereunder the Director
General of Police has confirmed the orders of Disciplinary
Authority and the appellate Forum by holding that no fresh
ground has been taken by the petitioner before him as it was
taken before the learned Disciplinary Authority as well as the
Appellate Forum. (Ann.-10).

(ii) To set aside the order dated 16.07.2019 passed in Military
Police (North Zone) order no. 141/2019 by the Deputy
Director General of Police, North division, Police Head



quarter, Patna whereby and whereunder the authority has confirmed the order of Commandant Bihar Military Police, 11, Jamui, dated 28.01.19 where by the petitioner was dismissed from his service (Ann.9).

(iii) And to set aside the order dated 28.01.19 passed by the Commandant Bihar Military Police, 11, Jamui, in Departmental inquiry (Proceeding) No. 12/18 and dismissed the petitioner from the service w.e.f. 21.01.19 by observing that he is absent from the duty for five months and has not completed the Training in six years. (Ann.-8).

(iv) And to direct the respondents to allow the petitioner to join his post as constable to regularize his carrier as a constable.

(v) Any other relief or reliefs for which the petitioner be found entitled in law be granted to him.”

Brief facts of the case

3. It is the case of the petitioner that after his selection in the Bihar Military Police, he was sent for training on 24.03.2012, but during the training period, he suddenly fell ill and became absent without information w.e.f. 26.10.2012 to 13.12.2015.

4. Learned counsel submits that the petitioner became absent due to mental disorder for which a departmental proceeding no. 7/15 was initiated against him which was concluded by awarding punishment of one “*Kalank*” as well as withholding of two increments of salary by an order dated 24.07.2016.

5. It is stated that during the training period itself, the



petitioner again became absent from duty without information between the night of 19.03.2016 to 30.03.2016 for about 11 days. He was placed under suspension. During suspension period he was found absent from 15.08.2016 to 18.08.2016 midday and on 25.08.2016 he was found absent in the night at the time of night counting from the Training Centre, Banka.

6. It is stated that the petitioner was found absent for about 144 days for which he was awarded minor punishment on conclusion of departmental proceedings i.e. stoppage of increments as well as no pay no work.

7. It is stated that a departmental proceeding no. 01/18 was pending against the petitioner for his absence from duty between the period dated 08.01.2018 till 22.03.2018 (74 days) which ultimately ended by awarding punishment of withholding of increment of salary of six months by an order dated 31.07.2018 by the Commandant and warning was given for further absence from duty.

8. It is stated that again a departmental proceeding no. 2/18 was initiated against the petitioner in the year 2018 on the allegation that the petitioner remained absent from duty between the night of 31.03.2018 to 24.04.2018 for 23 days which was concluded on 25.07.2018 awarding punishment by



withholding salary/allowances of 23 days by the Commandant.

9. It is stated that on 21.08.2018 Havildar Chhedi Uraon informed the Commandant Bihar Military Police, 11, Jamui that an untrained constable no. 586 Pankaj Kumar Yadav (the petitioner) was assigned “Bagan” duty on 20.08.2018 at 14 hours but he did not go on duty. He was not found in the “Barak” and “Campus Area”. On this information the petitioner was suspended on 27.08.2018 with immediate effect with general subsistence allowance. The petitioner was proceeded against but he failed to appear in the said disciplinary proceeding. The case of the petitioner is that since he was bedridden due to his mental illness his father had received letter dated 14.10.2018 (Annexure ‘4’ to the writ application) and replied by filing a representation to the Enquiry officer to consider the illness of his son sympathetically.

10. Learned counsel submits that the conducting officer did not believe the representation of the father of the petitioner and concluded the departmental proceeding in absence of the petitioner *ex-parte* and by letter dated 14.01.2019 the Commandant sent the report of the conducting officer and directed the petitioner to submit his defence statement as a last opportunity failing which final order shall be passed.



11. It is stated that at this stage also no reply was submitted because the petitioner was bedridden. His father submitted a reply stating every aspect of the matter vide Annexure '7' to the writ application.

12. Learned counsel submits that the disciplinary authority took note of the submission of the father of the petitioner and found that his father had said that his son (the petitioner) was suffering from mental disorder which has been treated madness and finally the petitioner has been dismissed from service.

13. The petitioner preferred a regular appeal before the DIG Military Police (North Division), Muzaffarpur who by his order dated 16.07.2019 dismissed the appeal (Annexure '9'). Learned counsel has assailed the order passed by the disciplinary authority as well as the appellate authority. It is submitted that the proceeding has been conducted *ex-parte* and as such no proper opportunity of hearing has been given to the petitioner.

Submission on behalf of the State

14. A counter affidavit has been filed on behalf of the respondent no. 5. The counter affidavit explains that the petitioner was found to be absent from the assigned post and



despite search his whereabouts could not be traced and he remained as an absconder. It is stated that it was also noticed that from the date of his appointment as Constable on 24th March, 2012, in his short service tenure at least on ten (10) occasions without any information and permission, the petitioner absconded from the Camp, he was also noticed to show cause that for basic training he was sent at least on three occasions to the different training centres, however, the petitioner did not complete his training and he was returned with some allegations. It is stated that simultaneously in memo no. 2106 dated 20.09.2018 the petitioner was also asked to resume his duties with orders that major penalty proceeding would be drawn against him in case he does not resume his duties. Copy of memo no. 2106 has been enclosed as Annexure 'C' to the counter affidavit.

15. It is further stated that for resuming duties under memo no. 2371 dated 14th October 2018, under memo no. 2658 dated 19th November 2018 and under memo no. 2778 dated 8th December 2018, the Commandant of Bihar Special Armed Police, 11, Jamui instructed the petitioner to resume his duties and to show cause in this regard but the petitioner did not join his service. Under these circumstances, the memo of charge as



contained in memo no. 2407 dated 22nd October 2018 together with list of witnesses and the documents as contained in Annexure 'G' to the counter affidavit.

Consideration

16. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds that despite all efforts taken by the respondent authorities the petitioner did not participate in the disciplinary proceeding. On earlier ten occasions he absented himself unauthorizedly and failed to complete basic training and he was punished in the departmental proceedings on several occasions earlier. The whole conduct of the petitioner is evident from the materials available on the record in which this Court is not inclined to exercise it's extraordinary writ jurisdiction to interfere with the impugned orders.

17. This Writ Application has not merit. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J.)

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