

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.66 of 2022

In

Civil Writ Jurisdiction Case No.16187 of 2019

Regt. No. 140320825 Ex. Constable Rulesh Singh Son of Kamla Singh,
Resident of Village - Nuwaon Tola, P.O. - Mangraon, P.S. - Kachohhwa,
District - Rohtas (Bihar) 821314.

... .. Appellant/s

Versus

1. The Union of India, through the Home Secretary, Ministry of Home, New Delhi.
2. The Deputy Inspector General, Indo Tibetan Border Police Force Area H.Q. and Bareilly, I.T.B.P. Bukharo CAMP, Bareilly (U.P.)
3. The Commandant, 7th B.N., Indo Tibetan Border Police Force Office of Commandant, 7th BN, I.T.B.P. (MNA) (GOI), P.S. - Merthi, District - Pithoragarh (Uttarakhand).
4. The Director General, Indo Tibetan Border Police Force, I.T.B.P., New Delhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pranav Kumar, Adv.
For the Union of India : Mr. Anand Tiwari, Adv.
For the Respondent/s : Mr. Dr. Krishna Nandan Singh (Asg)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-01-2023

Re.: I.A. No. 2 of 2022

The present interlocutory application has been filed
for the condonation of delay of 17 days in filing the present
appeal.

For the reasons stated in this application, the delay in
filing this appeal is condoned.



The interlocutory application stands disposed of.

L.P.A. No. 66 of 2022

Heard the learned counsel for the parties.

The appellant has been discharged/terminated on 27.10.2018 by invoking Rule 14(2) of the I.T.B.P. Rules, 1994.

The appellant was enrolled as a Constable who had to complete his probation before being inducted in the regular service. He could not complete the probation despite the extension of such period of probation.

The charge against him is of showing intemperate behaviour towards his colleagues and superior officers during the training period. At two locations, during the period of training, he was declared an absconder. Corporal punishment was also given to him where he was made to do some kind of pack drill for his intemperate and abusive conduct.

Since the appellant had not completed his probation and much before that was found to have absquatulated without any reason, he was discharged from service.

An appeal before the D.I.G. could not succeed.



However, we find from the records that at the stage of appeal, for the first time, the appellant was issued notice to explain his inappropriate conduct during the period of probation.

He replied to such notice but, the explanations were not found to be good enough to revisit the order of discharge.

Against the aforesaid order, the appellant preferred a writ petition before this Court *vide* C.W.J.C. No. 16187 of 2019 which was dismissed by order dated 15.12.2021, which is under challenge in the present appeal.

The learned Single Judge, after going through the counter affidavit of the I.T.B.P. Management, found that the appellant's record was absolutely unworthy for him to be retained in the paramilitary force. On many occasions, he was found to be missing from the training, was found drunk and, on top of it, had displayed drunken behaviour at times as well. For some reason or the other, he was given extended opportunities to complete his probation but to no avail.

Under the aforesaid circumstances, the learned Single Judge refused to interfere with the order of discharge,



notwithstanding that for discharging the appellant, he was not noticed in the first instance.

Mr. Pranav Kumar submits that since the order of discharge is stigmatic and there is nothing on record to indicate that a departmental proceeding could not have been initiated, such unilateral order of discharge cannot be sustained even in the garb of Article 311(2) of the Constitution of India.

We do not accede to such argument for the reason that the appellant had never entered into service which he would have, had he completed the probation period successfully.

We have found that in the past, on two occasions, the appellant went awol without any idea to the employer as to where he was. In such circumstances also, it was difficult to issue any notice to him.

Be that as it may, we further find that before the Appellate Authority, he was made known the charge for which he was shown the door, to which he had replied but, the reply was not found to be convincing.



We do not see any reason for interfering with the order passed by the learned Single Judge.

On the abovenoted set of facts, the appeal is dismissed.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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