

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.980 of 2017

In

Civil Writ Jurisdiction Case No.18705 of 2008

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Ajay Kumar Mishra Son of Sri Ram Naresh Mishra, Resident of Mohalla-Sarai Pakwan, Post Office-Keshavpur, Police Station-Alinagar, District-Chandauli, Uttar Pradesh

... .. Appellant/s

Versus

1. The Union Of India and Ors
2. Director general of Central reserve Police, Central Reserve Police Force, Head Quarter, New Delhi.
3. The Inspector General of Police, central Reserve Police Force, Patna.
4. The Deputy Inspector General of Police, Central Reserve Police Force Patna14, Bihar
5. The Commandant, B/11 Battalion, CRPF Camp Airport, Agartala, District-Agartala, Tripura

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Choudhary Shyam Nandan, Advocate Mr.Dinku Kumar, Advocate Ms.Ritika Rani, Advocate
For the Respondent/s	:	Mr.K.N.Singh, ASG Mr.Manoj Kr. Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-02-2023

In the instant appeal, appellant has assailed the order of learned Single Judge dated 26.04.2017 passed in CWJC No. 18705 of 2008.

2. Brief facts of the case are that appellant-Constable was appointed in the year 1990. He was placed under suspension in the year 1999 and it was revoked on 03.11.1999. He was



charge-sheeted in a departmental inquiry on 24.11.1999 on the alleged charge that he was under intoxication and misbehaved with superior. Charges are as under:-

“(a) For disobedience and misconduct in not doing the duty of orderly and for that he was confined to line from 02.11.1999 to 16.11.1999. During the period of imprisonment, the petitioner left the barrack from 13:30 to 18:30 without permission of any competent authority and went outside the premises of CRPF in terrorist affected area.

(b) The petitioner being constable of C.R.P.F. 11th Battalion committed misconduct and misbehaved with the superior officers, according to Section 11(1) of C.R.P.F. Act, 1949 and the petitioner without any provocation misbehaved, abused and used unparliamentary language against M.K.Sinha, the Deputy Commandant, DCO 11th Battalion, Maharani.

(c) The petitioner being on duty committed misconduct, as the petitioner did not obey the order of DCO 11th Battalion, C.R.P.F., Maharani who ordered him to go to the headquarter of 11th Battalion, C.R.P.F., Agartala as he referred to receive the order nor obeyed the order.”

3. Appellant had furnished his reply to the charge memo on 16.12.1999 but it was not to the satisfaction of the disciplinary authority. Thus, disciplinary authority proceeded to hold inquiry while appointing inquiring officer. The Inquiring Officer submitted his report on 07.03.2000 while holding the charges levelled against the appellant were proved. Consequently, disciplinary authority proceeded to issue second show-cause notice along with inquiring



officer's report. The petitioner submitted his reply on the inquiring officer report and show-cause notice thereafter, disciplinary authority proceeded to impose the penalty of dismissal from service on 21.04.2000.

4. Feeling aggrieved and dissatisfied with the order of penalty of dismissal he preferred appeal and revision in both the proceedings, he had suffered orders on 02.08.2001 and 20.03.2013. Hence, he has filed CWJC No. 18705 of 2008 and he has also suffered an order on 26.04.2017, in the result the present LPA.

5. Learned counsel for the appellant submitted that Doctor has not been cited as witness in support of the medical certificate. It is further submitted that disciplinary authority has not considered reply furnished by the appellant against the second show-cause notice and inquiring officer's report dated 21.04.2000 before imposition of penalty of dismissal from service. Further, submitted that charge of absence is for few hours and failed to obey orders of his superior on 02.11.1999 to 16.11.1999 as he had gone outside the premises of CRPF. Gist of the abuse against superiors using a particular unparliamentary language against M.K.Sinha the then, Deputy Commandant, DCO 11th Batallion, Maharani is not forthcoming, therefore, the alleged allegations are



very vague. These issues have not been apprised by the disciplinary, appellate, revisional and learned Single Judge and have not considered.

6. It is also submitted that non-citing Doctor as a witness and non-examination and cross-examination of a prime witness would vitiate entire proceedings. Therefore, order of the learned Single Judge and earlier orders of disciplinary, appellate and revisional authorities were liable to be set aside.

7. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that having regard to the alleged charge levelled against the appellant and the fact that he is in discipline force. The alleged charges which were proved in the departmental inquiry suffice to hold that there is no infirmity in the order of disciplinary, appellate, revisional and order of the learned Single Judge. Mere non-examination of Doctor that does not vitiate inquiry proceedings.

8. Heard the learned counsels for the respective parties.

9. The appellant joined service as a constable in the year 1999. He had committed alleged misdeeds while he was in service in the year 1999, he was placed under suspension thereafter it was revoked. He was subjected to disciplinary proceedings. The inquiry concluded in imposition of penalty of dismissal from



service. He has exhausted the remedy of appeal and revision and also before the learned Single Judge. Doctor's certificate has been taken note of in support of the alleged charge of intoxication in the absence of citing the doctor and examination and cross-examination insofar as intoxication is not proved in the manner known to the law. The other charges are relating to misbehave, abuse and using unparliamentary language against one M.K.Sinha and disobeying orders of superiors. These charges are very vague and it is not supported by material information while framing article of charges. In other words, charge must contain certain ingredients like dates and events. Perusal of charge no. 2 and 3 ingredients are not forthcoming. Further, we noticed that disciplinary authority while imposing penalty of dismissal from service on 29.03.2000, has failed to consider reply of the appellant as is evident from the dismissal order. In Para 6 of the dismissal order the disciplinary authority stated as under:-

“I have gone through the Departmental Enquiry proceedings and replies/representations of the delinquent No. 901141907 CT/GD Ajay Kumar Mishra. The charges levelled against him have been proved beyond any doubt. Before passing final orders on the Departmental Enquiry, the report of the Enquiry Officer was supplied to the delinquent vide letter No. P.VIII-I/2000-EC-III dated 10.03.2000 and delinquent was directed to submit his written representation, if any on the report of the Enquiry Officer to



defend himself within 15 days. However, the delinquent has neither brought out any new facts nor he has been able to produce any substantial evidence in his defence against the charges.”

10. Therefore, issuance of second show-cause notice along with the inquiring officer's report and proceeding to imposition of penalty is only an empty formality. In other words, the very object of providing second show-cause notice along with the inquiring officer's report and in non-consideration of appellant's reply is defeated to the extent that disciplinary authority has not considered respective contentions urged in his reply to the second show-cause notice along with inquiring officer's report dated 21.04.2000. Even perusal of the appellate and revisional authority they have not considered the relevant contentions urged by the appellant.

11. Non-citing and non-examination, cross-examination and chief examination or author of the document vitiate the inquiry in the light of the Apex Court decision **S.C. Girotra vs. United Commercial Bank (UCO BANK)** reported in **1995 Supp. (3) SCC 212** insofar as non-examination of relevant witness. Apex Court decision in the case of **Roop Singh Negi v. Punjab National Bank** reported in **(2009) 2 SCC 570** assist the appellant's case.



12. Even though learned Single Judge has referred to certain decisions and also extracted Rule 27(c) of CRPF, Rules 1955. However, it is to be noticed that non-citing relevant witness and prime witness, non-examination of witness vitiate the inquiry this has not been appreciated, further charges are not specific is not taken note of.

13. In the light of these facts and circumstances the appellant has made out a *prima facie* case so as to interfere with the order of disciplinary authority, appellate, revisional and order of the learned Single Judge, all the orders are set aside. While allowing CWJC No. 18705 of 2008.

14. Accordingly, the present Letters Patent Appeal No. 980 of 2017 stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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