

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1646 of 2019

In
Civil Writ Jurisdiction Case No.4780 of 2016

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Subodh Kumar, S/o Sri Krishanand Singh @ Krishanandan Singh, R/o
Village- Naudiha Saidpur, P.O.- Rahimpur, P.S. Sonpur, District- Saran.

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Home Department, Union of India, New Delhi.
2. The D.G. of Police, SSB, CGO Complex, North Block, Lodhi Road, New Delhi.
3. The I.G. of Police, Frontier Hqurs SSB, Patna.
4. The D.I.G. Sector Hqurs SSB, Muzaffarpur.
5. The Commandant SSB, 20th Bn, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Gajendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Awadhesh Kumar Pandey, SCGC
		Mr. Ravinder Kumar Sharma, 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 ARUN KUMAR JHA)

Date : 02-02-2023

Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The present L.P.A. is directed against the judgment
dated 14.11.2019 passed in CWJC No. 4780 of 2016 by the
learned Single Judge of this Court whereby and whereunder the
civil writ petition filed by the appellant has been dismissed.

3. In the writ petition, the appellant-petitioner has



sought following relief :

“For issuance of appropriate writ, order or direction to the respondents to set aside order of dismissal passed by the Commandant, 20th Bn. SSB, Sitamarhi (Annexure-6), to set aside order of D.I.G., SSB Sector Hqurs, Muzaffarpur, to set aside order of Inspector General, Frontier Hqurs, SSB, Patna and to set aside order of D.G., SSB, N. Delhi if adverse to the petitioner and for grant of all consequential benefits”.

4. Brief facts of the case are that the appellant had been working as Constable (GD) in Sashatra Seema Bal (‘SSB’ in short) and proceeded on 45 days earned leave w.e.f.16.05.2011 to 29.06.2011 and failed to resume his duty on expiry of sanctioned leave. He was issued several re-joining notices vide memo dated 04.07.2011 and memo dated 15.07.2011 at his permanent address with direction to resume his duty but he did not resume his duty and absented himself without proper leave/permission from the competent authority. Thereafter, a Court of Inquiry was ordered vide Office Order dated 23.08 2011 and conducted by Sri Maheshwar Prasad, Deputy Commandant to inquire into what circumstances CT/GD Subodh Kumar (appellant herein) absented himself after his sanctioned 45 days Earned Leave. The Inquiry Officer submitted his inquiry report and gave his opinion that Ex. CT/GD Subodh Kumar had overstayed from leave without



sufficient cause w.e.f. 29.06.2011 and did not respond/resume his duty in spite of several re-joining notices. Hence, inquiry officer recommended for declaring him as "Deserter" from the Force. Accordingly Commandant, 20th Bn SSB, Sitamarhi declared him "Deserter" from the Force under Section 74 of SSB Act, 2007 and issued a Show Cause Notice vide memo dated 20.02.2012 to Ex. CT/GD Subodh Kumar and proposed to terminate his services while providing an opportunity for making representation within 30 days from the receipt of show cause notice, but no response was received from the appellant. Subsequently, the appellant was removed from service vide Office Order No. E-III/PF/CRC 0591685/ CT(GD)/SK/4726-38 dated 19.04.2012. Being aggrieved by the aforesaid order of removal from service, the appellant preferred an appeal on 19.06.2012 before the Deputy Inspector General, SHQ, SSB, Muzaffarpur for reviewing his removal from Service. The appellate authority has rejected the appeal vide memo dated 27.09.2012. Thereafter, the appellant preferred the 2nd appeal on 23.01.2015 and on 31.01.2015 before the Inspector General, Frontier Hqrs SSB, Patna. The appellate authority also rejected the 2nd appeal of the appellant vide order dated 27.05.2015. The appellant again preferred memorial before the Director General, FHQ, SSB, New Delhi and when no order was passed on the memorial of the appellant, the petitioner (appellant



herein) preferred CWJC No.4780 of 2016. The learned Single Judge dismissed the appellant's writ petition. Hence, the present L.P.A.

5. The learned counsel for the appellant has submitted that the order of removal is unsustainable on the ground that a copy of enquiry report was not served on the appellant and the punishment of dismissal is grossly disproportionate to the allegation.

6. *Per contra*, the learned counsel for the respondents has submitted that no interference in the impugned judgment of learned Single Judge is called for as the same has been passed after duly considering all the materials on record. There is no irregularity in the procedure adopted in the departmental proceeding or there is no violation of principles of natural justice.

7. Having considered the material available on record and further considering the rival submission, it appears that the appellant proceeded on 45 days earned leave w.e.f.16.05.2011 to 29.06.2011 and failed to resume his duty on expiry of sanctioned leave. He was issued several re-joining notices with direction to resume his duty but he did not resume his duty and absented himself without proper leave/permission from the competent authority. The Inquiry Officer submitted his inquiry report and



given opinion that the appellant had overstayed from leave without sufficient cause w.e.f. 29.06.2011 and did not respond/resume his duty in spite of several re-joining notices. Hence, inquiry officer recommended for declaring him as "Deserter" from the Force. Accordingly Commandant declared him "Deserter" from the Force and issued a show cause notice to the appellant and proposed to terminate his services while providing an opportunity for making representation within 30 days from the receipt of show cause notice, but no response was received from the appellant. Subsequently, the appellant was removed from service vide Office Order dated 19.04.2012.

8. It further appears that the appellant chose not to participate in the enquiry after repeated notices, The appellant further chose not to explain his unauthorized absence or his conduct ever, therefore, it cannot be said that he was not served with a copy of enquiry report or that punishment was disproportionate. Unauthorized absence (or overstaying leave), is in itself an act of indiscipline. SSB is one of the disciplined organizations. Employee of such organization must maintain discipline while obeying orders of the superior officer. Remaining on unauthorized absence and it is not supported by any material information. The appellant has also not participated in the inquiry and there are no proper explanation to take note of



his absence in the inquiry.

9. In the light of discussion made hereinabove and under the facts and circumstances of the case, it cannot be said that the learned Single Judge has committed any error which calls for interference by this Court in exercise of the appellate jurisdiction. We are in agreement with the view taken by the learned Single Judge.

10. Accordingly, the present Letters Patent Appeal is dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	08.02.2023
Transmission Date	N.A.

