

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5999 of 2016

=====

Ram Pravesh Yadav Son of Sri Jagdeo Prasad Yadav Resident of Village-
Panialachak, P.O.-Patam, P.S.-New Ramnagar, District-Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. Director General of Police, Bihar, Old Secretariate, Patna.
3. D.I.G. of Police, Military Police, Central Zone, Patna.
4. Commandant, B.M.P.-10, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Manish Kumar, GP-8

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 02-09-2024

Heard Mr. Ram Hriday Prasad, learned counsel

appearing on behalf of the petitioner and Mr. Manish Kumar,

learned GP-8 for the respondents.

2. The petitioner in paragraph no. 1 of the present writ

petition has sought *inter alia* following relief(s), which is

reproduced hereinafter:

"1. That this is an application for issuance of appropriate writ, order or direction to quash the order of dismissal dated 18.10.2011 (Annexure-2) passed by the Commandant, B.M.P.-10, Patna and order of D.I.G. of Police, Military Police, Central Zone, Patna dated 25.04.2012 (Annexure-4) by which appeal of the petitioner has been rejected and order of Director General of Police dated 03.02.2016 (Annexure-6) by which memorial of petitioner has been rejected and for grant of all consequential benefits."

BRIEF FACTS

3. The petitioner being aggrieved by the penalty



order dated 18.10.2011 dismissing him from the service for the alleged misconduct that without informing any authority, he remained absent from duty. The petitioner, for the first time, in Appeal, preferred against the order of penalty dated 18.10.2011, had taken plea before the authority that he was under treatment and in support of the said information, the petitioner has brought on record certain documents relating to his health and several prescriptions and certificate duly issued by a doctor, namely, Dr. N.K. Yadav, that he was under treatment from 30.12.2008 to 21.03.2010. However, no reason has been assigned in the said certificate in support of the disease that the petitioner was suffering from Chronic Hepatitis with Jaundice, which required such a long treatment. The Appellate Authority having found no merit in the Appeal, had dismissed the Appeal vide order dated 25.04.2012, and, thereafter, Memorial filed by the petitioner was also dismissed vide order dated 03.02.2016.

SUBMISSIONS

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner was dismissed from service without giving any opportunity of hearing to defend his case in spite of the fact that the petitioner had informed the higher authorities regarding his ill health and in support of the said fact



and information, he has brought on record 'Annexure-5', however, the said application addressed to the Director General of Police, Bihar, don't contain the date of application. He further submitted that the cardinal principle of *Audi Alteram Partem* has been defeated and the petitioner has not been provided with opportunity to defend before imposition of major penalty. The order of dismissal dated 18.10.2011 passed by the Disciplinary Authority and the consequential order dated 25.04.2012 affirming the penalty order and the memorial dated 03.02.2016 are fit to be quashed.

5. *Per contra*, learned counsel appearing on behalf of the State referring to the provision of Article 311 of the Constitution of India submitted that petitioner was in a discipline force and no such adherence to requirement of giving opportunity of hearing to defend himself or holding any enquiry was required. However, petitioner was given opportunity but he has never appeared before the Disciplinary Authority. The Disciplinary Authority finding the petitioner to be absconder, had no alternative then to pass an order of dismissal dated 18.10.2011.

ANALYSIS AND CONSLUSION

6. Heard the parties.



7. Having considered the rival submissions made on behalf of the parties, as well as, the pleadings made in the writ petition and the evidences adduced thereto and the counter affidavit, supplementary counter affidavit and afresh counter affidavit filed on behalf of respondent no. 4 in compliance of order dated 02.02.2023, wherein, it has been stated that the petitioner was in discipline force and in paragraphs no. 9, 10 and 11 of the counter affidavit filed on behalf of respondent no. 4 following statements have been made which are *inter alia* reproduced hereinafter:

"9. That so far providing assistance to the delinquent is concerned, there is no such provision in Bihar Police Manual, 1978 however, in Rule-17(8)(a) of Bihar CCA Rules, 2005 provides that the government servant may take the assistance of other Government servant posted in any office and further Rule-17(8)(b) provides that the Government servant may take the assistance of a retired government servant to present the case on his behalf.

10. That so far compliance of Rule-843 of Bihar Police Manual, 1978 is concerned, it is submitted that the petitioner was appointed to the post of constable on 14.03.1986 and during his service up to 01.01.2009 the petitioner remained overstayed for 9 (Nine) times and 5 (five) times remained absconder whereas three times he was given major punishment. The character of the petitioner appears that he was indiscipline, undutiful and inefficient as well as habitual which is not expected from police forces.

However, Rule-843 of Bihar Police Manual, 1978 quoted as per below:-

Rule-843 - Punishment for absence without leave.

"Willful overstayed of leave or absence from duty without leave shall be treated as misbehavior and after obtaining the explanation of the officer concerned proceeding shall invariably be drawn up and departmental punishment inflicted.....

As a rule whenever an officer does not return in time on duty, enquiries shall be made by the Superintendent/Commandant within one week from the S.P. if his native district, and should there appears that the officer has not returned to his duties in time for good reason he should be



suspended and departmental proceeding should be undertaken as per rule."

Therefore, Rule-843 of Bihar Police Manual, 1978 is related to an officer and is not applicable in the case of petitioner.

11. That it is relevant to mention here that the petitioner in the affidavit of writ application stated that his age is about 53 years in the year 2016, however, in the Aadhar Card of the petitioner, date of birth is mentioned as 05.02.1963 therefore, the age of petitioner is 60 years however, in the rejoinder, the petitioner has stated his age as 50 (Fifty) years which is wholly incorrect facts about his date of birth."

8. In compliance of order dated 18.05.2022, the respondent- Commandant, B.M.P. 10, has brought on record the date and events from the date of issuance of Charge Memo till deciding the appeal/memorial categorically by way of supplementary counter affidavit, which *inter alia* are reproduced hereinafter:

"On 24.09.2010, the Charge Memo was issued by the then Commandant, BMP-10, in which, the petitioner was charged with dereliction of duty, indiscipline behavior and despotism / arbitrariness and copy of charge memo was sent to the petitioner vide Memo No. 2459 dated 24.09.2010. It was also sent to the home address of the petitioner through special messenger and received by one Nihal Kumar.

On 22.01.2011, Smt. M. Kalyani, Dy. S.P. was appointed as Enquiry Officer by the Commandant, BMP-10 for inquiry in the disciplinary proceeding against the petitioner.

On 22.01.2011, Enquiry Officer received the file and fixed the date on 15.02.2011 for disciplinary proceeding against the petitioner and it was also directed that since the petitioner is absconder therefore informed through special messenger.

On 28.01.2011, the Order dated 22.01.2011 was communicated through a letter vide Memo No. 256 dated 28.01.2011 to the witnesses for their presence for evidence as well as, to the petitioner for cross examination of the witnesses.

On 15.02.2011, two witnesses namely, Ranjit Das, Reserved Officer and Bhaigirath Singh, Havildar and Major posted at the Training Centre, Patna were examined in absence of the petitioner since he did not appear and the petitioner was again given time to submit his explanation in his defense within fifteen days.

On 17.02.2011, one constable was deputed to serve the order enclosing the statement of the witnesses and a



copy of the charge vide Memo No. 128 dated 17.02.2011.

On 20.02.2021, the petitioner has received the Letter Vide Memo No. 128 dated 17.02.2011 at 8 O' Clock, but he has not filed any explanation nor appeared before the enquiry officer.

On 24.03.2011, the Enquiry Officer found the petitioner guilty of the charge and submitted his inquiry report in two copies and returned to the Disciplinary Authority.

On 27.07.2011, the Letter was issued by the Commandant, BMP- 10, Patna vide Letter No. 1961 dated 27.07.2011 for explanation against his dismissal from the service. On 19.08.2011, the Letter No. 1961 dated 27.07.2011 which was communicated to the petitioner through special messenger and received by the petitioner on 19.08.2011.

On 01.09.2011, second Show Cause vide Letter No. 2313 dated 01.09.2011 was issued by the Commandant, BMP-10 to the petitioner and the same was sent through the special messenger prior to passing the order of dismissal.

On 03.09.2011, second Show Cause was served to the petitioner through the special messenger vide Memo No. 2313 dated 01.09.2011. On 17.10.2011, the Disciplinary Authority has agreed with the report of Inquiry Officer and passed the order of dismissal against the petitioner and the order was informed to all the officials including the petitioner vide Letter No. 2762 dated 18.10.2011.

On 25.04.2011, the Appeal of the petitioner before the DIG, BMP, was rejected. On 04.05.2012, the Appeal Order was communicated to the petitioner by the Commandant vide Letter No. 1400 dated 04.05.2012 through special messenger and the same was received by the petitioner on 05.05.2012.

On 29.01.2016, after four years, memorial submitted by the petitioner against the order passed by the Appellate Authority DIG, BMP, and after hearing the memorial was rejected by the DGP, Bihar, Patna. "

9. In ***State of U.P. v. Ashok Kumar*** reported in ***(1996) 1 SCC 302***, the Hon'ble Supreme Court has held as under:

"We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation



that “his absence from duty would not amount to such a grave charge”. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that “the punishment does not commensurate with the gravity of the charge” especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

10. Record reveals that a command was issued on 01.01.2009 for training of Senior Promotion Course (S.P.C.) which training, the petitioner did not join. He remained absent unauthorisedly so he was declared absconder. The petitioner was informed on 01.01.2009 regarding initiation of Departmental Proceeding and for submitting his explanation vide Memo No. 563 dated 04.03.2009 and a reminder was also sent vide Memo No. 1400 dated 08.06.2009 informing him initiation of Departmental Proceeding against him.

11. The petitioner had filed reply giving reasons for absence that he was suffering from Jaundice from 30.12.2008 to 21.03.2010. Anytime before the reply, the petitioner had not informed regarding his illness by any mode of communication. Information has been given on behalf of the State that in Departmental Proceeding was started vide Departmental Proceeding No. 01 of 2011 on 22.01.2011 against the petitioner (constable no. 654), Mrs. Mamta Kalyani, the then Dy. S.P., B.M.P.-10, Patna, was made conducting officer. The



commandant B.M.P.-10, Patna vide Memo No. 1961 dated 27.07.2011, communicated the petitioner on 19.08.2011. Thereafter, second Show Cause, as to why, he not be dismissed, was duly served to the petitioner on 01.09.2011. Thereafter, again the Commandant B.M.P.-10, Patna, sent reminder for submission of explanation, which was received by the petitioner on 03.09.2011. In spite of ample opportunity, the petitioner did not appear to participate in the Departmental Proceeding. Even the service record of the petitioner reveals that nine times he overstayed from leave and five times petitioner has been declared absconder. Petitioner remained absent from duty willfully for long periods from time to time without leave, which can only be treated as misbehavior having committed misconduct as he never returned on duty.

12. In case of ***Director General, RPF v. Ch. Sai Babu***, reported in ***AIR 2003 SC 1437***, the Hon'ble Supreme Court reiterated that the High Court should not ordinarily interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed as follows:

"Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining



all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

13. I find it apt to quote paragraph no. 6,7 and 8 of the judgment passed by the Apex Court in case of ***Satguru Singh vs. Union of India & Ors*** reported in **2019 (9) SCC 205** which is, *inter-alia*, reproduced hereinafter:

6. We do not find any merit in the present appeal. Para 5(a) of the Circular dated 28-12-1988 deals with an enquiry which is not a court of inquiry into the allegations against an army personnel. Such enquiry is not like departmental enquiry but semblance of the fair decision-making process keeping in view the reply filed. The court of inquiry stands specifically excluded. What kind of enquiry is required to be conducted would depend upon facts of each case. The enquiry is not a regular enquiry as Para 5(a) of the Army Instructions suggests that it is a preliminary enquiry. The test of preliminary enquiry will be satisfied if an explanation of a personnel is submitted and upon consideration, an order is passed thereon. In the present case, the appellant has not offered any explanation in the reply filed except giving vague family circumstance. Thus, he has been given adequate opportunity to put his defence. Therefore, the parameters laid down in Para 5(a) of the Army Instructions dated 28-12-1988 stand satisfied.

7. In reply to the show-cause notice, the appellant has not given any explanation of his absence from duty on seven occasions. He has been punished on each occasion for rigorous imprisonment ranging from 2 days to 28 days. A member of the Armed Forces cannot take his duty lightly and abstain from duty at his will. Since the absence of duty was on several different occasions for which he was imposed punishment of imprisonment, therefore, the order of discharge cannot be said to be unjustified. The Commanding Officer has recorded that the appellant is a habitual offender. Such fact is supported by absence of the appellant from duty on seven occasions.

8. In view thereof, we do not find any error in the order of discharge of the appellant. Appeal is dismissed.



14. Considering the aforesaid facts of the case, I find no merit in the present writ petition. Accordingly, the present writ petition is dismissed, however, no order as to cost.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	13.09.2024
Transmission Date	N/A

