

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19530 of 2014

Binod Kumar Rathore, son of Dadan Prasad of village Dumaria, P.O.-
Bharaulli, P.S.-Shahpur, District – Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The D.G. cum I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police (HR), Bihar, Patna.
4. The D.I.G. of Police, BMP, Central Zone, Patna.
5. The Commandant, BMP-2, Dehri on Sone.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nityanand Mishra, Advocate.
		Mr. Alok Abhinav, Advocate.
For the State	:	Mr. Prashant Pratap, GP-2.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 04-07-2024 Heard Mr. Nityanand Mishra, learned counsel along
with Mr. Alok Abhinav, learned counsel appearing on behalf of
the petitioner and Mr. Prashant Pratap, learned GP-2 for the
State.

2. The petitioner has filed the writ petition for the
relief as sought for in Para-1 of the writ petition, which are,
inter alia, reproduced hereinafter:

*“That this is an application for issuance of
appropriate writ order or direction to the respondents to
set-a-side order of dismissal (Annexure-4), to set-a-side
order of D.I.G. of Police, BMP(Zone Patna (Annexure-5)
set aside order of D.I.G(HR) Bihar, Patna (Annexure-6) to
set aside order of D.G. of Police, Bihar Patna (Annexure-7)
and for grant of all consequential benefits.”*

3. Learned counsel appearing on behalf of the



petitioner submitted that the petitioner was appointed as Constable in 2006. He was doing service to the satisfaction of his seniors. The conduct of the petitioner reveals that the petitioner had remained absent or had not honoured the direction of his superior authority on several occasions which as per the allegation is that the petitioner had been assigned duty on account of counting and winner procession and was deputed on 14.05.2009 and deserted till 16.05.2009. Petitioner remained absent for three days while he had been assigned duty for dak distribution and for that punishment of censure was passed against the petitioner. The petitioner, thereafter, proceeded for leave on 08.02.2007 and returned after 22 days for which he was inflicted with punishment of forfeiture of 22 days salary and one year increment. The petitioner was again held for having deserted on 03.09.2008 and had returned after 70 days for which the petitioner was inflicted with punishment of forfeiture of salary and one year increment. The petitioner again deserted and was found to have returned after 28 days while he had gone for dak distribution.

4. Learned counsel submitted that the petitioner was dismissed vide order contained in Memo No. 4152 dated 11.11.2009 and thereafter, the said order was affirmed by the



Deputy Inspector General of Police, B.M.P., Patna vide order dated 04.03.2011 contained in Memo No. 38 and then the petitioner preferred Appeal Memorial before the Deputy Inspector General of Police, Human Rights, Patna who also did not interfere with the punishment order by passing a reasoned order dated 07.12.2012 contained in Memo No. 3552 and thereafter, the petitioner preferred Appeal Memorial before the Director General of Police, Patna who also did not interfere with the punishment order by passing a reasoned order dated 15.05.2013 contained in Memo No. 1436.

5. Learned counsel further submitted that show cause was asked from the petitioner. The petitioner filed his reply that he suffered from nervousness, restlessness and uneasiness and was taken by his family members to a Psychiatrist and had annexed medical prescription and certificate. The Disciplinary Authority did not examine his defence. The prescription of the doctor has evidentiary value in view of Section 45 of the Indian Evidence Act. Doctors come under the category of expert and without examination of doctor disbelieving medical leave is illegal. Petitioner has relied on several judgments and decisions of the Apex Court and this Hon'ble Court.

6. The petitioner has stated that the Hon'ble Supreme



Court and High Court repeatedly held that in view of section 45 of Indian Evidence Act, doctors come under the category of expert.

7. The provision of Police Manual Rule 843 has also been referred to contend that “when ever an officer does not return in time on duty, inquiries shall be made by the SP/CO within a week by the S.P. of his native District.

8. It has been contended that the departmental proceeding is quasi judicial in nature. Decision should be taken on evidence not on surmises or conjecture. The dismissal of the petitioner by the commandant BMP 2 is arbitrarily on account of absence without considering medical ground etc. in light of the judgment of the Apex court in the case of Bhagat Ram vs State of H.P reported in (1983) 2 SCC 442.

9. Learned counsel, in the above background, submitted that the orders passed by the Disciplinary Authority, D.I.G., B.M.P.; D.I.G. (Human Rights) and the Director General of Police are not sustainable in the eye of law as having been passed without giving opportunity of hearing to the petitioner and the same are required to be set aside and quashed.

Submission on behalf of the respondents

10. *Per contra*, learned counsel appearing on behalf of



the respondents submitted that the petitioner was deputed at Town P.S. Sasaram where he had proceeded on 14.05.2009 to Head Quarter for getting leave vide Command letter No. 747940, but he did not went there and taking command letter, he absconded for 96 days without any information and returned back after 96 days on 20.08.2009 at his deputed work place - Town P.S. Sasaram, which shows his indisciplined attitude, neglect of work, and gross misconduct. A Departmental proceeding No. 02 of 2009 was initiated against the Petitioner. The petitioner remained absconding and he had never participated in the departmental proceeding leaving no option, then in his absence, the statement of witness produced by the prosecution side was recorded. Consequently, in the interest of justice, a letter was sent at the petitioner's home address through special messenger which was received by him on 27.09.2009 for submitting his defence containing statement of witnesses. The petitioner was given all reasonable opportunity to defend his case, but he did not take care and produce his defense for the charges leveled against him.

11. The punishment was awarded based on deposition of the witness exhibit marked, and gravity of the charges leveled against the petitioner.



12. Heard the parties.

13. The record reveals that the petitioner used to remain absent from duty without leave for unreasonable period which is evident from the statement made by him in the writ petition.

14. It would appear from Annexure-4 (Memo No. 4152 dated 11.11.2009) that the petitioner had deliberately not filed his reply to the first show cause notice contained in Memo No. 2567 dated 18.07.2009 by which the petitioner was granted 15 days time to file his reply and remained absent. Thereafter, the Disciplinary Authority has also taken note that second show cause was served to the petitioner contained in Memo No. 3460 dated 27.09.2009 which has been brought on record by way of counter affidavit. Reference of the two show cause notices finds in the impugned order contained in Memo No. 4152 dated 11.11.2009 (Annexure-4 to the writ petition) and based on that even at the appellate stage petitioner has not taken the plea that he has filed his show cause.

15. The Fact reveals that the petitioner has deliberately not resorted to reply to the show cause issued to him, as such, the punishment order which has been inflicted on the petitioner cannot be interfered with taking into consideration



the documents which have been brought on record for consideration of the show cause which is said to be filed on 27.10.2009 before the Authority concerned.

16. The question arises as to whether irrespective of the past conduct of the petitioner, the order of dismissal from service is justified as the petitioner remained absent for long duration without leave on five occasions which fact, by itself, shows that he was a habitual absentee.

17. In State of U.P. and Ors. Vs. Ashok Kumar and Anr. reported in (1996) 1 SCC 302, 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."

18. In view of the above, I do not find any force in contention of the learned counsel for the petitioner that the punishment of removal from service does not commensurate



with the misconduct of the Petitioner.

19. For the reasons recorded hereinabove, I find no reason to interfere with the impugned orders. The writ petition being devoid of any merit is dismissed as such.

20. The interlocutory applications, if any, also stand disposed of.

(Purnendu Singh, J)

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