

20.09.2024
SL No.147
Court No.24
Ali

WPA 18128 of 2018

**Prahlad Kumar
Versus
Union of India & Ors.**

Mr. Kamlesh Jha,
Mr.A. Mondal,
Mr. Debasish Mukhopadhyay,
Ms. Jeenia Rudra,
Ms. Madhushri Dutta,
Ms. Nabanita Chatterjee

.....for the petitioner.

Mr. Kumaresh Dalal

.....for the respondents.

The present petitioner was a Constable/GD No. 110702739 under the Commandant, Sashastra Seema Bal, 41, BN SSB, Ranidanga, P.O.- Ranidanga, P.S.-Bagdora, District- Darjeeling.

During his service the present petitioner booked in a G.R. Case being No. 1695/16 arising out of Naxalbari Police Station Case No. 133/16 dated 20th June, 2016 for alleged offence punishable under Section 342, 493, 376 (2) (e) (1) and Section 120B of the Indian Penal Code, 1860 read with Section 6 of POCSO Act.

It is the case of the petitioner that in connection with the said criminal case he was apprehended and remained in the custody for a long period; after enlarged on bail on 16th December, 2016, he approached the authority concerned to allow him to join.

It is the further case of the petitioner that the Senior Officers were not allowed the petitioner to join the duty till the disposal of the criminal case.

It is the further case of the petitioner that being not allowed to join the duty, the petitioner was staying elsewhere to his residential address due to the pendency of the criminal case.

It is the further case of the petitioner that the criminal case was ended with an order of acquittal by the learned Sessions Judge on 12th of April, 2018 wherein the present petitioner found not guilty to the charged against him. After the order of acquittal he approached the authority to join the duty. Thereafter, he came to know that an order of “Deserter” has already been passed against him on 16th September, 2017 by the Commandant, Sashastra Seema Bal, 41, BN SSB, Ranidanga, as well an order of dismissal has also been passed on 23rd of October, 2017.

It is the case of the petitioner that he was not aware about any of the proceeding initiated against him. He was not given an opportunity of hearing of the matter. Moreover, he is running with him family without any income. So, at this juncture, he prayed for necessary order upon the authority concerned so that he may allow joining the duty.

Learned counsel appearing on behalf of the respondent authority placed the affidavit-in-opposition filed on behalf of the respondents. He submits that a Memorandum was issued upon the petitioner on 14th of January, 2017 when it is under the knowledge of the respondent authority that the petitioner was enlarged on bail on 16th of December, 2016. He was directed by the Memo to join the duty immediately. The said memo was served upon the residential address of the petitioner at Patna. In response to such Memo he did not join again the authority concerned has passed another Memorandum informing the petitioner to join immediately on 4th of February, 2017. Such memo was also served. Thereafter, one memo dated 15th of April, 2017 was also served. As the petitioner did not join the duty without any information for more than 30 days. The authority concerned had to start a Court Enquiry. The Convening Order dated 16th of June, 2017 was also served upon the petitioner at his residential address at Patna. By such communication the terms of reference has already been mentioned. During the proceeding of such Court Enquiry, a Memorandum was issued upon the Superintendant of Police, Patna, Bihar dated 30th August, 2017 for apprehension of the present petitioner. Again same communication was made to

the Superintendant of Police, Patna on 8th September, 2017. The petitioner neither surrender before the authority concerned nor had been apprehended by the police authority. Consequently, the authority concerned finding no other alternative has declared the petitioner as **“Deserter”** on 16th September, 2017. After declaring the petitioner “Deserter”, two show cause notices were served upon the petitioner on 28th September, 2017 and 6th of October, 2017 directing the petitioner to show cause as to why a disciplinary proceeding shall not be initiated against him. Both the show cause notices were served at the residential address of the petitioner at Patna and there were two Paper Publications in the Daily Newspaper circulated at Patna regarding service of show cause notices through Paper Publication. After such service upon the petitioner through his residential address as well as through Paper Publication, the authority concerned has initiated the proceeding and passed an order of dismissal against the petitioner from the service on 23rd of October, 2017.

It is the positive case of the respondent authority that the petitioner never informed his changed address to the concerned authority. Moreover, all correspondences show cause notices were properly served upon the petitioner. But, on all

cases, he never approached before the authority. Accordingly, the order of “Deserter” as well as the order of dismissal passed by the concerned authority is according to the provisions of ***The Sashastra Seema Bal Act, 2007.***

Learned counsel for the respondent authority further submits that there is a provision for appeal before the Inspector General, Head Quarter, Ranidanga according to the Rule 29 of ***The Sashastra Seema Bal Act, 2007.*** But, the petitioner has not availed the said provision of appeal. He further submits that the instant writ petition is not at all maintainable. The present order under challenged has been passed by the authority concerned according to the Law.

Heard the learned advocates; perused the petition, the facts suggested that the petitioner was booked in a criminal case and he was apprehended by the police authority. Accordingly, he was in long custody during the trial. It is come to the knowledge of the respondent authority that he enlarged on bail. Accordingly, a Memorandum was issued upon the petitioner on 14th of January, 2017 directed him to assumption the duty immediately. It appears from the Memorandum that such Memorandum was served upon the petitioner at his residential home at Police Station Bikram, Patna, Bihar. All the

correspondences, thereafter, regarding the Memos and show cause notices of the departmental proceedings were served upon the petitioner at Patna. Admittedly, when the Memos were issued; he was booked with the criminal case and was regularly facing the trial before the learned Court of Additional Sessions Judge, 2nd Court-cum-Special Judge, under POCSO Act, Darjeeling.

It appears to my knowledge that the petitioner was facing a trial for alleged commission of heinous offence and for the reasons the order of bail condition must have confined him within the jurisdictional area of the learned Court itself i.e. within the District of Darjeeling. That being the situation, it is within the knowledge of the respondent that the petitioner is regularly facing the trial; the respondent authority has not demonstrated anything that the petitioner has ever been declared absconder by the Special Court for non appearing before the Court during the trial procedure. The entire criminal case was disposed of by the declaring the petitioner to be not guilty on 12th of April, 2018. So, admittedly, the petitioner was within the Darjeeling District since the initiation of the case i.e. from the year 2016 to April, 2018. It appears that it was within the knowledge of the respondent authority that the present petitioner was

facing trial before a Court at Darjeeling, they regularly served Memorandum and show cause notices to the petitioner at his residential address at Patna, Bihar.

It further appears that the respondent authority has served notice through Paper Publication before initiation of the disciplinary proceedings, which is a daily, circulated at Patna.

Considering the entire situations, it appears to me that the respondent authority must be served the notice upon the petitioner at Darjeeling or served through Paper Publication through a daily, circulated at Darjeeling District.

It further appears that the respondent authority was not at all unaware that the petitioner was facing trial before a Court at Darjeeling thus all the correspondence to the petitioner by the respondent before initiation of the proceeding of declaring him "Deserter" or the order of dismissal was not actually served upon the petitioner who required to be served properly. The notices and the Memorandum thus served upon the petitioner are hereby declared to be not a good notice. Furthermore, it appears that the authority concerned has issued Memorandum to the Superintendent of Police, Patna for apprehension of the present petitioner while they are within the

knowledge that the present petitioner is facing a trial in connection with Naxalbari Police Station Case within the District of Darjeeling. They must have issued the Memo to the Superintendent of Police, Darjeeling for proper communication and for apprehension of the petitioner.

Considering the entire reasons, I am of the view that the proceeding adopted by the respondent authority against the petitioner is not at all tenable in the eye of law. Thus, the impugned order for “Deserter” dated 16th September, 2017 as well as the order of dismissal dated 23rd of October, 2017 is hereby quashed.

The respondent No. 2 i.e. The Commandant, Sashastra Seema Bal, 41, BN SSB, Ranidanga is directed to consider the representation of the petitioner and to pass necessary order according to the provisions of Law.

The petitioner is further directed to approach the authority with a fresh representation coupled with the order of this Court; within two weeks from the date of passing of this order. On such representation the respondent authority shall dispose of such representation after giving a reasoned opportunity of being heard to the petitioner within four weeks thereafter. The decision

of the authority shall be communication to the petitioner within two weeks thereafter.

Under the above observation, the writ petition being **WPA 18128 of 2018** is disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)