

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.28 of 2025

In

Civil Writ Jurisdiction Case No.3923 of 2020

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1. The Union of India represented by the Secretary, Ministry of Home Affairs, North Block, New Delhi.
 2. The Director General, Reserve Police Force, Block no.1 C.G.O. Complex Lodhi Road, New Delhi-110003.
 3. The Inspector General (Training) CRPF Directorate, Central Reserve Police Force, Block no.1 C.G.O. Complex Lodhi Road, New Delhi-110003.
 4. The Deputy Inspector General, RTC, CRPF, Rajgir, Nalanda.
 5. The Commandant, RTC, CRPF, Rajgir, Nalanda.

... .. Appellant/s

Versus

Keshav Kumar Son of Shri Sudama Kumar, Ex-Constable No. 041706976, Village Bhavnathpur P.O.- Rannuchak, Mukundpur, P.S. Akbar Nagar, District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr. K.N.Singh, ASG Ms. Kanak Verma, CGC Mr. Shivaditya Dhari Sinha, Advocate
For the Respondent/s	:	Mr. Manish Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 12-08-2025

Re: I.A. no.1 of 2025

Heard Dr. K.N.Singh, learned Additional Solicitor General assisted by learned counsel Ms. Kanak Verma for the Union of India/appellant and Mr. Manish Kumar, learned counsel for the writ petitioner/respondent.

2. The instant application has been filed for condoning the delay of 69 days in filing of the instant appeal.



3. Having heard learned counsel for the parties and having perused the material on record, the Court is satisfied that the appellants have made out a case for condonation of delay in filing of the instant appeal.

4. The delay of 69 days in filing of the instant appeal is condoned.

5. I.A. no.1 of 2025 stands allowed.

Re:L.P.A. no.28 of 2025

6. The instant appeal has been preferred by the writ respondent/Union of India against the order dated 26.9.2024 whereby the learned Single Judge was pleased to allow the writ application (CWJC no.3923 of 2020) filed by the writ petitioner/respondent and set aside the order dated 23.8.2016 passed by the Commandant, RTC, CRPF, Rajgir, the order dated 20.11.2016 of the Deputy Inspector General, RTC, CRPF, Rajgir and the letter/order dated 5.9.2019 also of the Deputy Inspector General, RTC, CRPF, Rajgir.

7. The relevant facts in brief are that the respondent joined service as Constable/GD in the year 2004 at Mokama Ghat. While posted at RTC, Rajgir, on an application filed by him for leave on account of serious illness of his father, the respondent was granted leave from 16.9.2015 to 21.9.2015. He



did not join duty even on expiry of the leave and reminders having been sent from the office vide different letters brought on record as annexures to the counter affidavit in the writ application. A complaint was filed against the respondent in the Court of the learned C.J.M.-cum-Commandant and a warrant of arrest was issued on 4.1.2016. The Court of enquiry was ordered and by order dated 23.3.2016, the respondent was declared a deserter from the force with effect from 22.9.2015. It further transpires that a departmental enquiry was initiated against the respondent and a memorandum of charge was issued to him. Sri Manish Kumar, Deputy Commandant of RTC, Rajgir was appointed as the enquiry officer. In spite of notices having been issued for appearance in the departmental proceeding, the respondent did not appear nor engage in any correspondence. Accordingly, the enquiry proceeded ex parte and the enquiry officer submitted his enquiry report. Finally having taken into consideration the materials on record, the authorities passed the orders of punishment of dismissal on 23.8.2016. The respondent preferred an appeal before the Deputy Inspector General of Police which was rejected on 20.11.2016. The revision preferred before the Inspector General of Police (Training) was rejected on 5.9.2019. It was thereafter that the instant writ application



was preferred by the respondent on 19.2.2020.

8. It is submitted by learned Additional Solicitor General appearing for the appellant/Union of India that the learned Single Judge erred in appreciating the facts and the relevant laws in the correct perspective. It was submitted that the Hon'ble Supreme Court in the case of ***Union of India vs. Ram Lakhan Sharma; (2018) 7 SCC 670***, on account of non appointment of the Presenting Officer and the Enquiry Officer having acted as the prosecutor also, the judgment of the High Court setting aside the dismissal order was upheld by the Hon'ble Supreme Court. The learned Additional Solicitor General submitted that the learned Single Judge failed to appreciate that in the said case, liberty had been granted to the appellants therein ie the Union of India to proceed with the enquiry afresh from the stage of appointing the Presenting Officer. It was submitted that the learned Single Judge failed to appreciate the materials available on record in the correct perspective, the order of the learned Single Judge be set aside and the prayer made in the writ application be dismissed. In case, the said prayer does not find favour with this Court, in terms of the judgment of the Hon'ble Supreme Court in the case of ***Ram Lakhan Sharma (supra)***, liberty be granted to the



Union of India to proceed with the enquiry against the respondent afresh from the stage of appointment of the Presenting Officer.

9. The appeal is opposed by learned counsel appearing for the writ petitioner/respondent who submits that there is no merit in the instant appeal. It is further submitted that the proceedings having been conducted without appointing a Presenting Officer strikes at the root of fairness as held by Division Bench of this Court in the case of *Union of India through Director General, CRPF, New Delhi and Ors. vs. Sudhanshu Shekhar; (LPA no.955 of 2014; order dated 12.9.2018)*. Further reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of *Ram Lakhan Sharma (supra)*.

10. Heard learned counsel for the parties and perused the material on record.

11. The relevant facts in brief are that the respondent, a Constable/GD in the Central Reserve Police Force, on account of having absented himself and not having returned for duty inspite of the sanctioned leave having long expired was proceeded against in a departmental proceeding. Inspite of several notices/letters/communications having been



sent, the respondent did not appear in the departmental proceeding which proceeded *ex parte* against him and ended in the order of dismissal from service on 23.8.2016. The appeal and the revision preferred by the respondent against the order of dismissal were rejected on 20.11.2016 and 5.9.2019 respectively. It was thereafter that the writ application was filed in this Court on 19.2.2020. The same having been allowed by order dated 26.9.2024, the instant appeal has been preferred by the Union of India.

12. It is not in dispute that even in the *ex parte* departmental proceeding against the respondent, no Presenting Officer was appointed and thus relying on the judgments including that in the case of ***Ram Lakhan Sharma (supra)*** and more particularly paragraph no.35 thereof, the learned Single Judge was pleased to set aside the orders of dismissal as also those passed in appeal and revision.

13. It may be mentioned here that in the case of ***Ram Lakhan Sharma (supra)***, the enquiry officer had recorded the prosecution evidence. The respondent therein was inflicted with the penalty of removal from service. The appeal and the revision preferred against the order of punishment were also rejected. However, on the writ application having been



preferred, the learned Single Judge allowed the same by setting aside the order of removal but also permitted the appellant/Union of India to initiate the disciplinary enquiry afresh from the stage of appointing presenting officer. The Hon'ble Supreme Court held that the High Court was right in setting aside the dismissal orders by giving liberty to the appellant to proceed with the enquiry afresh. Paragraph nos.36, 37 and 38 of the judgment in the case of **Ram Lakhan Sharma (supra)** are reproduced herein below for ready reference:

“36.Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to



Civil Appeal No.2608 of 2012.

37. The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.

38. In result, all the appeals are dismissed subject to the liberty as granted by the High Court that it shall be open for the appellants to proceed with the inquiry afresh from the stage as directed by the High Court and it shall be open for the appellant to decide on arrear pay and allowances of the respondents.”

14. So far as the facts of the present case are concerned, the same relate to misconduct by personnel in uniform service. Not only did the respondent overstay beyond the leave sanctioned to him but also did not participate in the departmental proceeding which had to proceed *ex parte*.

15. In the facts of the case, the Court finds merit in



the submissions made by learned Additional Solicitor General on behalf of the Union of India. While upholding the order of the learned Single Judge setting aside the order of punishment as also the orders passed in appeal/revision/review, the appeal stands partly allowed with the liberty to the appellant/Union of India to initiate the disciplinary enquiry afresh from the stage of appointing the Presenting Officer.

16. On commencement of the departmental proceeding, the respondent shall be placed under suspension and during the period of suspension he shall be paid subsistence allowance. So far as payment of arrears of pay/salary/allowances for the period of suspension/dismissal are concerned, the same shall be decided by the respondent-authorities. The departmental proceeding shall be concluded at the earliest preferably within a period of six months.

17. The appeal stands disposed of with the above observations and directions.

(Vipul M. Pancholi, CJ)

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.08.2025
Transmission Date	N/A

