

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5634 of 2025

Shiv Murti Son of Ram Ashrey, resident of H. No. 146 Asarwan Rampur, P.S.
Piprapur, District Sultanpur U.P.

... .. Petitioner/s

Versus

1. Union of India through its Secretary Ministry of Home Affairs, Govt. of India, New Delhi.
2. Commandant Assistant Director (Pers-1) Directorate General SSB (MHA) New Delhi-110066.
3. Dy. Inspector General SHQ SSB Bettiah Camp at 44 BN SSB Narkatiaganj West Champaran, Bihar.
4. Commandant 71 BN SSB Motihari at Piprakothi, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mahesh Prasad Rao, Adv.
For the Respondent/s	:	Ms. Savita Singh, Adv.
		Mr. Sumit Kumar, Adv.
		Mr. Sudhanshu Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 10-04-2025

Heard Learned Counsel for the petitioner and
Learned Counsel for the Union of India in virtual mode.

2. Learned Counsel for the petitioner submits that the present writ petition has been filed for quashing of the orders dated 28.01.2022 and 06.05.2022 passed by Opposite Parties No.3 and 4 *i.e.*, Deputy Inspector General SHQ SSB Bettiah Camp at 44 BN SSB Narkatiaganj, West Champaran and Commandant 71 BN SSB Motihari at Piprakothi.

3. Counsel for the petitioner submits that the said order of dismissal of the petitioner is completely bad in law and



has been passed in gross violation of Article 311(2) of the Constitution of India. He further submits that the petitioner was a Government servant and he cannot be dismissed from the service merely on the ground of conviction, but authorities has to consider the case of the petitioner as protection was granted to the petitioner in the light of Article 311(2) of the Constitution of India.

4. Learned Counsel for the Union of India submits that the petitioner's case is fit to be rejected as the order of removal has been passed on 06.05.2022 and the said appeal was arisen from the order passed in month of January, 2022. But the petitioner has filed the present writ petition after lapse of about 3 years *i.e.*, in the year 2025. Such delay has nowhere explained.

5. Counsel for the Union further submits that Article 311(2) of the Constitution of India provides protection to the Government's employee, but in the present case, this protection is not available to the petitioner as the present matter is relating to conviction.

6. In response thereof, counsel for the petitioner submits that delay has been caused only due to the reason that the petitioner was in custody and he was not aware of the law.

7. After hearing the parties as well as upon perusal of



the documents, it transpires to this Court that the petitioner was convicted and he has preferred criminal appeal against the said punishment. He was granted bail on 06.01.2022 by which his sentence has been suspended during pendency of the appeal.

8. It also transpires to this Court that the petitioner was a Government servant and it is admitted fact that the Government servant are protected under Article 311(2) of the Constitution of India. The provisions of Article 311(2) with its proviso states as follows:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall



not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

9. It transpires to this Court that the petitioner was a Constable i.e., a person other than officer. Dismissal or removal of person other than officer has been guided by Rule 22 of the Border Security Force Rules, 1969 which states as follows:-



“22. Dismissal or removal of person other than officer on account of misconduct.-(1)

When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub- rule (2) against such action:

Provided that this sub-rule shall not apply -

(a) where the service is terminated on the ground of conduct which has led to his conviction by a Criminal Court or a Security Force Court; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion its disclosure is



not in the public interest.

(3) The competent authority after considering his explanation and defence, if any, may dismiss or remove him from service with or without pension:

Provided that a Deputy Inspector-General shall not dismiss or remove from service, a subordinate officer of and above the rank of a Subedar.

(4) All cases of dismissal or removal under this rule, shall be reported to the Director-General.”

10. It transpires to this Court that Article 311(2) which grants protection to the Government officer by virtue of Constitutional (15th Amendment) Act of 1963 *w.e.f.*, 05.10.1963, but proviso has further been amended by 42nd Constitutional Amendment, 1976 *w.e.f.*, 03.01.1977. The proviso namely, (a) of the Article 311(2) provides that this clause shall not apply- where a person has been dismissed or removed in the rank on the ground of conduct which has led to his conviction on a criminal charge.

11. It further transpires that the termination of the petitioner was made on the ground of conviction on a criminal charge, and therefore, the protection about which the petitioner talks about granted under Article 311(2) of the Constitution of



India to the Government Servant, shall not be applicable in the case of the petitioner in the opinion of the Court.

12. This Court also finds that in appeal, the suspension of sentence has been made vide order dated 06.01.2022 and the law is very much clear about sentence and conviction. The word used in proviso of Clause 2 of Article 311 of the Constitution is the conviction and not the sentence. In the opinion of the Court the above mentioned Article 311(2) of the Constitution of India due to its proviso, which has been inserted *w.e.f.*, 03.01.1977, there is no protection available to the petitioner and, hence, the present writ petition is hereby dismissed.

13. With the aforesaid directions and observations, the present writ application stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	
CAV DATE	N/A
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