

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.799 of 2022

In
Civil Writ Jurisdiction Case No.293 of 2020

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Bhola Choudhary Son of Late Ramchandra Choudhary Resident of Village-
Harigaon, Police Station Belaganj, District- Gaya.

... .. Appellant.

Versus

1. The State of Bihar Through the Principal Secretary, Department of Home,
Government of Bihar, Patna.
2. The Home Commissioner (Police) Government of Bihar, Patna.
3. The Director General of Police Bihar, Patna.
4. The Inspector General of Police, Patna Division, Patna.
5. The Deputy Inspector General of Police Magadh Range, Gaya.
6. The Deputy Inspector General of Police, Aurangabad Range, Aurangabad.
7. The Superintendent of Police, Jehanabad.
8. The Inspector of Police - cum- Conducting Officer, Ghoshi Anchal,
Jehanabad.

... .. Respondents.

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Appearance :

For the Appellant : Mr. Ravindra Nath Dubey, Advocate.
For the State : Mr. Saroj Kumar Sharma, AC to AAG-3.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-04-2025

I.A. No.1 of 2022:

Heard I.A. No.1 of 2022.

2. There is a delay of about 114 days in filing the
present L.P.A. No.799 of 2022.

3. For the reasons stated in the application read with
the affidavit, delay of about 114 days in filing the present L.P.A.



No.799 of 2022 stands condoned. Accordingly, I.A. No.1 of 2022 stands allowed.

L.P.A. No.799 of 2022:

4. The appellant has assailed the order of the learned Single Judge dated 01.08.2022 passed in C.W.J.C. No.293 of 2020.

5. The appellant-Bhola Choudhary was a Constable. He applied for four days leave with effect from 09.05.1988. Thereafter, he remained unauthorized absent for a period of about 42 days. On his return to the office on 24.06.1988, he had been taken back to the duties. Thereafter, departmental inquiry has been initiated and it was concluded in imposition of penalty of dismissal from service. It was a subject matter of C.W.J.C. No.18164 of 2009. On technical ground, matter was remanded to the disciplinary authority. Once again, he was punished and it was the subject matter of C.W.J.C. No.13943 of 2010. This Court set aside the later punishment order of dismissal and further directed to hold a fresh inquiry. Thereafter, once again appellant was dismissed from service on 05.11.2018 and preferred an appeal before the Appellate Authority and it was rejected on 04.02.2019. In this backdrop, C.W.J.C. No.293 of 2020 has been filed by the appellant. The learned Single Judge



had dismissed C.W.J.C. No.293 of 2020 vide order dated 01.08.2022. Hence, the present L.P.A. No.799 of 2022 by the appellant.

6. Core issue involved in the present lis is whether for remaining unauthorized absence for about 42 days would result in imposition of major penalty of dismissal from service and is it commensurate with the charge or not?

7. We find, prima facie, penalty of dismissal from service for remaining unauthorized absence for 42 days is not commensurate with charge. The Hon'ble Supreme Court in the case of **Union of India and Another Versus R.K. Sharma**, reported in **2022 SCC OnLine SC 2010**, examined the issue of quantum of penalty read with charge.

8. Having regard to the above facts and circumstances and the fact that the appellant is before this Court for the 4th time from the year 2009, in order to give quietus to the litigation, we propose to modify the penalty from dismissal order dated 05.11.2018 read with the order of the Appellate Authority dated 04.02.2019 to the following effect:

“Dismissal penalty order is modified to that of withholding of two increments with a cumulative effect and it would be effective from 05.11.2018, the date on which



dismissal order was passed. The appellant shall be reinstated within a period of three months from the date of receipt of this order. However, we make it clear that appellant is entitled to only 50% of the back wages from 05.11.2018 to this day. The same shall be calculated and disbursed in favour of the appellant within a period of three months from the date of receipt of this order.”

9. The present L.P.A. No.799 of 2022 is allowed in part.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2025.
Transmission Date	NA

