

(2018) 09 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.20236 of 2010

Abhay Kumar Singh

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 11-09-2018

Acts Referred:

Citation : (2018) 09 PAT CK 0015

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Ram Binod Singh, rchana Minakshi

Final Decision : Dismissed

Judgement

The present writ petition has been filed for quashing the order dated 22.12.2009, passed by the Superintendent of Police, Samastipur, whereby and

where under the petitioner has been dismissed from service. The petitioner has further prayed for quashing of the appellate order dated 08.06.2010.

The brief facts of the case are that the petitioner was appointed on compassionate ground pursuant to the death of his father on 04.07.1998 by the

Superintendent of Police, Purnea. It is the contention of the petitioner that when the petitioner was sent for training from Samastipur to B.M.P.-5,

Patna on 09.01.2008, the petitioner had reported at B.M.P.-5, Patna on 09.01.2008 and had started the training, in the meantime, he received

information about illness of his wife and after informing his superior, he had left for his home, however, since the Havildar was not present, he could

not inform the Havildar.

The respondents had initiated a departmental proceeding and a charge sheet was issued with regard to the petitioner having absconded from duty

without information on various occasions. The Enquiry Officer had conducted the enquiry proceedings against the petitioner and submitted his enquiry report dated 13.09.2006, whereby and where under the charges levelled against the petitioner were found to be proved. A second show cause notice dated 15.10.2009 was issued to the petitioner, enclosing the enquiry report and the petitioner was asked to submit his reply regarding as to why he be not dismissed from service for the proved charges levelled against him. The petitioner had then replied to the second show cause notice, however, the petitioner was dismissed from service by an order dated 22.12.2009 issued by the Superintendent of Police, Samastipur. The petitioner had then filed an appeal, however, the same was also dismissed by the impugned order dated 08.06.2010.

The learned counsel for the petitioner has submitted that the present case is a case of no evidence. The learned counsel has relied upon the judgment rendered by the Honâ??ble Apex Court in the case of Roop Singh Negi vs. Punjab National Bank & Ors., reported in (2009)2 SCC 570. The learned counsel has further submitted that the disciplinary authority cannot take into account irrelevant facts, not germane to the departmental enquiry under consideration, hence the order of punishment is perverse and is fit to be set aside inasmuch as in the present case the disciplinary authority while passing the order of dismissal has also taken into account various punishments passed earlier against the petitioner herein on account of him being absent in an unauthorized manner as well as him being an absconder on various occasions.

Per contra, the learned counsel for the respondents has submitted that the petitioner is a habitual offender and he has absconded from his duties on several occasions and in a police force/armed force, strict discipline is required to be maintained which the petitioner has blatantly violated, hence no mercy should be shown to the petitioner herein. The learned counsel has further submitted that the disciplinary proceeding has been conducted in accordance with law and there is no procedural irregularity. The learned counsel for the respondents has relied upon a judgment rendered by the Honâ??ble Apex Court reported in A.I.R. 2017 SC 4145 (Mihir Kumar Hazara Choudhary vs. Life Insurance Corporation & Anr.) to contend that an appellate court/High Court cannot sit over the findings of the Enquiry Officer and find fault in it nor can it re-appreciate the evidence of witnesses

examined in departmental enquiry.

I have heard the learned counsel for the parties and I find that ample evidence is on record to prove the guilt of the petitioner herein and there has

been no procedural irregularity in conduct of the disciplinary proceedings. The judgments relied upon by the learned counsel for the petitioner are not

applicable in the facts and circumstances of the present case and are distinguishable. Moreover, this Court finds that the past conduct of the petitioner

can definitely be taken into account for the purposes of inflicting punishment upon the petitioner herein. Reference in this regard be had to a judgment

rendered by the Honâ??ble Apex Court, reported in (2005) 2 SCC 489 (Bharat Ford Company Limited Vs. Uttam Manohar Nakate).

Moreover, this Court also finds that a high level of discipline is imperative in the Police and Armed Forces and even one isolated incident of discipline

is enough to take the most harsh step against the delinquent. However, in the instant case, the petitioner is a habitual offender and had absconded on

several occasions from his duties without any information to the respondents, hence no mercy is required to be shown with the petitioner especially in

view of his proved misconduct. I have also gone through the order of punishment dated 22.1.2009 and the appellate order dated 08.06.2010 and I do

not find any perversity as far as the said orders are concerned. For the reasons mentioned hereinabove, I find that there is no merit in the present writ

petition, hence the same is dismissed.