
(2018) 07 PAT CK 0060

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 199 Of 2006

Bikram Chaudhary

APPELLANT

Vs

State Of Bihar, Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Bihar Police Manual, 1978 — Rule 849

Citation : (2018) 3 PLJR 617

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Sangiv Kumar, Apurv Harsh

Final Decision : Dismissed

Judgement

1. Heard the parties.

2. This writ application under Article 226 of the Constitution of India has been filed for setting aside the order dated 23.02.2003 passed by Deputy

Inspector General of Police, Saran at Chapra by which order of forfeiture of increment earned during service period and allowing petitioner to

continue in service at the basic pay scale has been passed by the Disciplinary Authority as well as order dated 30.06.2004 passed by the I.G. Police,

Muzaffarpur dismissing the appeal of petitioner.

3. Briefly stated, the facts of the case is that petitioner was proceeded departmentally for remaining unauthorised absent from 25.06.2001. According

to Town P.S. station diary dated 25.06.2001, petitioner proceeded to appear before the court of learned Judicial Magistrate, 1st Class, Vaishali, for his

evidence in G.R. No. 1952/67 and whereafter he absconded and his whereabouts were not known to Town P.S. Chapra. He thereafter did not return.

He did not return his service revolver and 35 live cartridges and remained unauthorised absence for a long period which also adversely affected the cases which were investigated by him. He was put under suspension on 04.01.2002.

4. Departmental Proceeding was initiated against petitioner for his unauthorised absence and memo of charge dated 08.01.2002 issued by S.P. Saran, Chapra, was sent at his home address through special messenger and same was received by his brother in presence of Mukhiya of the village but petitioner did not appear in the departmental proceeding. Dy. S.P. (H.Q) Saran, Chapra was appointed as Enquiry Officer giving rise to Departmental Proceeding No. 14 of 2002.

5. In course of departmental proceeding 1st show cause notice dated 29.01.2002 and thereafter notice dated 13.03.2002 was sent to petitioner to participate in departmental enquiry and to submit his defence statement and produce evidences in his defence. All steps were taken by the enquiry officer to serve notice upon petitioner but still he did not appear in the departmental proceeding and thereafter communique was also issued in daily newspaper Hindustan dated 25.03.2002 directing petitioner to appear in the enquiry proceeding but even after paper publication he did not appear.

Thereafter memo dated 11.05.2002, memo dated 15.07.2002 and memo dated 03.08.2002 was sent to the petitioner but he did not appear, as such departmental proceeding was held ex parte and departmental witnesses were examined in his absence.

6. Petitioner was a habitual absconder. He was proceeded under Rule 843 of Bihar Police Manual. Petitioner never inform about his continued absence to the department. Neither he sought any leave from department nor he was granted any leave by the department.

7. Petitioner never appeared before the enquiry Officer even after proper service of notice and paper publication and never brought to the knowledge of enquiry officer reasons for his continued absence and after final order was passed petitioner tried to justify his unauthorised absence on basis of medical certificates and pathological reports and tried to legitimise his unauthorised absence but same was never brought to the knowledge of inquiry officer as petitioner did not file his defence statement or participated in the enquiry proceeding even after having knowledge of the proceeding.

8. Petitioner never informed department, reasons for unauthorised absence and he was put under suspension on 04.01.2002 even thereafter he did not think proper to resume his duty and explain reasons for unauthorised absence. He did not made any correspondence with the department after he absconded from the police station.

9. Petitioner was issued 2nd show cause notice dated 17.09.2002 and 15.12.2002 and he submitted his reply to the 2nd show cause which was duly considered by the D.I.G., Saran Range, Chapra while imposing the order of punishment dated 20.03.2003 as a disciplinary authority. Order has been passed by the disciplinary authority after giving adequate opportunity to the petitioner and considering the findings of enquiry officer and previous service records of the petitioner. The appeal of petitioner was dismissed by order dated 13.09.2004 by the I.G. police, Muzaffarpur Zone, Bihar.

10. Petitioner was charged that on 25.06.2001 he was posted as A.S.I. in Saran police station, Chapra and proceeded to give evidence before court and thereafter did not report in the police station till 05.07.2001. Petitioner remained unauthorised absence with service revolver and 35 live cartridges for a long time without any information to the department, which also affected the investigation conducted by petitioner, as such he was put under suspension on 04.01.2002 and departmental proceeding was initiated against him and memo of charge dated 08.01.2002 was sent on his home address but even after repeated notices sent by the enquiry officer he did not appear and enquiry was held ex parte. Two witnesses were examined by the department to prove the charge and after considering the evidence and materials on record Enquiry Officer found the charges to be proved against the petitioner.

11. After unauthorised absence of 293 days he submitted his joining on 17.04.2002 and deposited his service revolver and cartridges and after three days again absconded from 20.04.2002 and remained absconding. The Enquiry Officer in departmental proceeding on 11.05.2002 has observed that it has come to his knowledge that petitioner has joined his duty as such he is directed to appear before him on 21.05.2002 at 11:00 am, on which date he can submit his explanation. Earlier also petitioner has been imposed 8 major punishments and 10 minor punishments and has been rewarded twice.

12. Petitioner was given show cause notice dated 05.12.2002 issued by Deputy

Inspector General of Police, Saran Division, Chapra against the proposed punishment of dismissal from service and in reply to said show cause notice petitioner submitted his reply enclosing medical prescriptions of doctors and pathologist report that he was suffering from Jaundice, as such, he could not appear. His mother was suddenly taken ill, as such he returned to his home for treating his mother but thereafter himself suffered from jaundice, as such remained absent from duty.

13. The Disciplinary authority after considering the reply of petitioner imposed punishment of reduction in the rank at lower stage of basic pay. By his order dated 20.03.2003 passed by Deputy Inspector General of Police, Saran Division, Chapra. The appeal preferred by the petitioner has been dismissed by the I.G. police, Muzaffapur Division, Muzaffarpur by his order dated 30.06.2004. The Appellate Authority has considered the grounds of appeal filed by petitioner and after due consideration of memorandum of appeal has dismissed it by a reasoned and speaking order. Both the authorities have considered the charge against petitioner and reply of the petitioner and have found that even assuming that there were reasons for petitioner for remaining absent on account of his and his mother's illness but there was no reason for petitioner to not inform the department or seek further leave by higher authorities and such his conduct amounts to indiscipline, insubordination and lack of devotion towards duty which makes him unbecoming of a police personnel.

14. Petitioner is an Assistant Sub-Inspector in police department which is a disciplined force and high degree of discipline, devotion and morality is required in service. Petitioner remained 293 days unauthorised absent without informing the department retaining service revolver and cartridge and also due to his unauthorised absence the investigation of cases which were entrusted to him were adversely affected. The misconduct of petitioner is of serious nature and is not condonable. Petitioner is guilty of indiscipline and insubordination and disciplinary authority has taken very lenient and sympathetic view and has retained petitioner in service.

15. Apex Court in the case of Union of India and Ors vs Ghulam Mohd. Bhat since reported in (2005) 13 SCC 228, has held as follows:-

â??9. This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In State of U.P. v. Ashok Kumar Singh,

the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee

concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show

as to how the punishment could be characterised as disproportionate and/or shocking. It has been categorically held that in a given case the order of

dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so

the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High

Court is set aside. The appeal is allowed but under the circumstances there shall be no order as to costs.â??

16. After considering the facts and circumstances of the present case, this Court is not inclined to interfere in the orders passed by Disciplinary

Authority as well as Appellate Authority. The punishment imposed is commensurate and proportionate to proven guilt and accordingly, there is no

merit in the writ petition and same is dismissed, however, without any cost.