

(2013) 08 PAT CK 0032
In the Patna High Court
Case No : CWJC No. 9136 of 2007

Chandramauli Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 PLJR 901

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Teg Bahadur Singh, Pranav Kumar and Rakesh Kumar Singh, for the Appellant; N.A. Shamsi, for the Respondent

Judgement

Rakesh Kumar, J.—Heard Sri Ram Hirday Prasad, learned counsel, who was assisted by Sri Pranav Kumar, learned counsel for the petitioner and Mr. N.A. Shamsi, learned Assistant Solicitor General, who appears on behalf of all the Respondents. The petitioner, while invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order, contained in letter No. 774 dated 14th February, 2006 (Annexure-6 to the writ petition) passed by Respondent No. 5/Senior Commandant, C.I.S.F., whereby he has passed order for removal of the petitioner from his service. The petitioner has further prayed for quashing of order dated 25.5.2006 passed by Respondent No. 4/Deputy Inspector General, C.I.S.F. (Annexure-8 to the writ petition), whereby his appeal was rejected and he has also prayed for quashing of order dated 22.2.2006 passed by Respondent No. 3/Inspector General, C.I.S.F. (Annexure-9 to the writ petition), by which revision preferred by the petitioner was also rejected.

2. Short fact of the case is that the petitioner was proceeded on an allegation of overstay of leave for 199 days. Second charge was that earlier on three occasions also, he unauthorisedly remained on leave beyond the period of sanction. In the enquiry, opportunity was given to the petitioner and thereafter

punishment order was passed.

3. Learned counsel for the petitioner submits that during the enquiry, the petitioner had given satisfactory reply for his absence for the alleged period. It has been pleaded that the petitioner was earlier granted leave and he went to his native place, where he fell ill and, thereafter, he was examined in Govt. referral Hospital, from 5.2.2005 to 5.4.2005. On 5.4.2005 he was declared fit by the doctor. Thereafter, he sent an application for extension of his leave for appearing in B.A. Part-II examination. Again, thereafter, he remained absent since his mother was ill. He submits that explanation give by the petitioner was sufficient to grant leave, but the disciplinary authority has imposed punishment of his removal from his service, which is too harsh and, accordingly, it may be set aside.

4. Mr. N.A. Shamsi, learned Assistant Solicitor General has vehemently opposed the prayer of the petitioner. He submits that Charge No. 2 makes it clear that earlier also the petitioner had committed misconduct, but he never tried to mend himself and finally he remained absent for about 199 days. He submits that in Armed Forces, unauthorized leave is considered as serious misconduct warranting dismissal from the service.

5. Besides hearing the parties, I have also perused the materials available on record. Learned counsel for the petitioner was not in a position to satisfy the Court as to whether any irregularity or illegality was committed during the departmental enquiry. Only plea was taken that punishment against the petitioner was too harsh. In view of law laid down by the Apex Court, particularly in a case reported in (2005) 13 SCC 709; Union of India vs. Datta Linga Toshatwad, the Court is of the opinion that the punishment imposed against the petitioner may not be considered as disproportionate. I do not find any ground for interference with either of the orders. The writ petition stands dismissed.