

(2019) 11 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19188 Of 2019

Hari Yadav

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

Citation : (2019) 11 PAT CK 0036

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Sunil Kumar, Dhuvendra Kumar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. This writ application has been filed on 16.09.2019 questioning the correctness of an order dated 27.07.1999 passed by the Superintendent of Police, Gaya, in the Departmental Proceeding No. 62 of 1998 whereby the petitioner was dismissed from service. He was holding the post of Constable at the relevant point of time. His appeal against the said order of the disciplinary authority was also dismissed on 16.08.2000 by the Deputy Inspector General of Police, Gaya, which order has also been put to challenge in this case.

3. The matter relates to an occurrence of 17.09.1998 when the petitioner was deployed at Pretshila Parwat police picket in the district of Gaya. The Naxalites are said to have attacked the Police Post and looted away 16 Police rifles and 640 cartridges after killing of two Constables. The occurrence had led to registration of Chandauti P.S. Case No. 115 of 1998. The petitioner was found absent from duty when the occurrence had taken place. The manner, in which, the petitioner was found absent from duty without prior permission of the competent authority on the date of occurrence, had led to initiation of a departmental proceeding against him with issuance of a charge memo on 26.09.1998. He took a plea that he had to leave the Post after having received an information about a serious

ailment of his wife on 16.09.1998 and he resumed his duties on 18.09.1998. The charge memo has been brought on record by way of Annexure-2 to the writ application. He was charged of having deserted the police picket without any prior permission of the authority. The Inquiry Officer submitted his report holding charge against the petitioner of having deserted the Post without any prior permission to have been proved, which, in the facts of the case was taken to be and act of serious misconduct. The second show cause notice was issued to him, which, the petitioner had responded to. The Superintendent of Police, Gaya, being the disciplinary authority, considering the seriousness of misconduct of the petitioner, imposed on him a punishment of dismissal from service by the aforementioned order dated 28.09.1999. The petitioner had approached this Court against the orders of the disciplinary authority and appellate authority by filing writ application giving rise to CWJC No. 15687 of 2005, which was also dismissed by an order dated 19.06.2012 considering the fact that the petitioner had chosen to abandon his Post and his Arms and did not care for safety of other persons.

4. It transpires that though the petitioner was not named in the First Information Report registered for the said occurrence, his name surfaced in course of investigation and was made an accused. The trial ended in acquittal of all the persons charged in the said trial case No. 235 of 2017/378 of 1999 by a Judgment and order dated 07.05.2019 passed by the learned Presiding Officer, Fast Track Court No. II, Gaya. In the aforesaid background, the petitioner wants reconsideration of the case of his dismissal from service in the light of subsequent acquittal recorded by learned Presiding Officer, Fast Track Court No. II, in his judgment dated 07.05.2019, a copy of which, has been brought on record by way of Annexure-4 to the writ application.

5. Learned counsel appearing on behalf of the petitioner has contended that since the petitioner has not been held guilty of the criminal charge, the disciplinary authority is required to reconsider the disciplinary action of dismissal from service, taken against him.

6. I have carefully perused the judgment and order of the learned Presiding Officer, Fast Track Court No. II, Gaya, dated 07.05.2019. I have also perused the charge memo, the order of the disciplinary authority and the appellate authority. The issue as regards the dismissal of petitioner from service attained finality, in my view, with passing of the order dated 19.06.2012 in CWJC No. 15687 of 2000. The disciplinary action was taken against the petitioner on the basis of the evidence and materials which were available before the Inquiry Officer and the Disciplinary Authority. The decision of the criminal court is on the other hand, based on the evidence available before the Court. In the departmental proceeding, the allegation against the petitioner was of having abandoned his Post and his Arms without any due permission from the superior authority. The said charge leading to a departmental action against the petitioner, in my opinion, cannot gone into again in view of this Court's decision in CWJC No.

15687 of 2005, on the plea of the petitioner that he has been acquitted in criminal case.

7. This writ application has no merits, and, is accordingly dismissed.