

(2020) 01 PAT CK 0420

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24302 Of 2019

Nitu Kumari

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 PAT CK 0420

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Rajeev Kumar Singh, S. D. Sanjay, Ravindra Kr. Sharma

Final Decision : Allowed

Judgement

Heard Mr. Rajeev Kumar Singh, learned counsel for the petitioner and Mr. S.D. Sanjay, Additional Solicitor General for the Union of India.

The writ petition has been filed with a prayer for quashing of the order dated 18.08.2018 whereby the Commandant, Central Industrial Security Force (hereinafter referred to as 'C.I.S.F.') has awarded the penalty of 'removal from service' to the petitioner, who was a Lady Constable /GD(UT). The petitioner has also assailed order dated 08.08.2019 issued by the Deputy Inspector General (for short 'D.I.G.') C.I.S.F., rejecting her appeal against the order of removal dated 18.08.2018.

The relevant facts are that on 07.04.2017, the petitioner was appointed as a Lady Constable in R.T.C. Arakkonam, District Vellore, in Tamil Nadu. She was to undergo basic training as a Lady Constable w.e.f. 08.05.2017 for a period of nine months. While under training (UT), the petitioner gave an application on 05.08.2017 seeking a leave of seven (07) days w.e.f. 06.08.2017 to 12.08.2017. The leave was claimed on account of illness of her mother. Leave was also sanctioned. She, therefore, was to report back on 13.08.2017. Having overstayed for 105 days she returned back on 25.11.2017.

For this overstayal of leave, she was proceeded against and visited with a penalty of withholding of one increment for a period of one year, not having the effect of postponing her future increments under order contained in letter no. 785 dated 02.02.2018 issued by the D.I.G. C.I.S.F.

From 31.01.2018 to 04.02.2018, petitioner again took a leave. This time it was on account of illness of her daughter. The petitioner claims that her daughter did not recover, and as such, she could not report back on 05.02.2018, when she was required to report back. The writ petition admits that notices were issued to the petitioner on 07.02.2018 (Annexure-4) and 22.02.2018 (Annexure-5) calling upon her to report back and that in case of failure to report back strict disciplinary action was likely to be taken against the petitioner. The petitioner merely states in her pleadings that she responded to the notices, however, no response has been placed on record in support of such statements made in the writ petition.

On 12.03.2018, the memorandum of charge along with articles were sent to the petitioner framing two charges. Relating to her overstayal of leave beyond the sanctioned permissible period and also disobeying the instructions issued to her requiring her to report back. The charge was also alleging such misconduct repeatedly. The petitioner was, thus, proceeded against for such misconduct which amounts to gross indiscipline unbecoming of a member of discipline Force. Thereafter, the Enquiry Officer and the Presenting Officer, were appointed under communication dated 02.04.2018 as contained in Annexure(s)-7 and 7A of the writ petition.

The averments made in the writ petition further reveals that a third call of notice was also issued to the petitioner on account of her overstayal of leave. The petitioner had sent an application for extension of leave and after due consideration, the same had been rejected by the Competent Authority and thereafter the disciplinary proceedings under Rule 36 for overstaying leave had been started by issuance of memorandum of charges taken note of hereinabove, intimation to this extent, had been forwarded to the petitioner even on 04.04.2018 (Call of notice III). The petitioner was, once again, directed to report back, immediately, for further training. The petitioner, however, chose not to comply with the notices, ignored rejection of her extension of leave and also did not appear in the disciplinary proceedings. The Authorities, therefore, were left with no alternative, and, thus, proceeded ex parte. The copy of the Enquiry Report was also served upon the petitioner under letter dated 16.07.2018 (Annexure-9). There is no averment in the writ petition that petitioner even availed of the opportunity to make her submissions against the copy of the Enquiry Report.

The averments, in the writ petition, make it abundantly clear that not only has the petitioner overstayed leave, disobeyed at least three notices requiring her to report back, but also has chosen not to participate in the disciplinary proceedings, even after service of memorandum and articles of charges. She has

also chosen not to avail the opportunity granted to her to respond to the enquiry report.

It is, under such circumstances, that the petitioner has been visited with penalty of 'removal from service' by the Commandant.

The conduct of the petitioner and expected conduct from the petitioner being a member of the discipline Force is a relevant factor for consideration by this Court, while exercising jurisdiction under Article 226 of the Constitution of India. Conduct of the petitioner emerging from the averments made in the writ petition itself, leaves a lot to be desired from the petitioner in this respect. Thrice notices were issued to the petitioner to report back and resume her training as lady constable. Memorandum and articles of charges were also served upon her. She chose not to participate in the disciplinary proceedings. Ex parte Enquiry Report was also served upon her. She again chose not to avail the opportunity at this stage to make her submissions against the Enquiry Report. The petitioner's conduct, therefore, is such that there is deemed waiver of natural justice by the petitioner who has chosen not to participate in the proceedings in spite of repeated opportunity granted to her.

The submission of the petitioner's counsel that the proceedings were in violation of the principles of natural justice and that at least she should be given an opportunity to appear in proceeding afresh therefore has to be viewed in this background.

The law, in this regard, is well-settled. The Apex Court in the case of Board of Directors, H.P.T.C. & Anr. Vs. K.C. Rahi reported in (2008)11 SCC 502 has clearly stated the law that where the delinquent chooses not to avail of the opportunity of natural justice granted to him, he is estopped from raising a plea of violation of the principles of natural justice. Under such circumstances, there is a deemed waiver of natural justice by conduct, as in the instant case. The petitioner therefore cannot be heard to contend that even in spite of his deemed waiver of natural justice, the same has to be applied, as if natural justice is a straightjacket formula.

Para-8 of the judgment of the Apex court in the case of K.C. Rahi(supra) reads as follows:-

"8. In the instant case we have been taken through various documents and also from the representation dated 19- 10-1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. In the representation submitted by him on 19-10-1993 the subject itself reads "DEPARTMENTAL ENQUIRIES". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is no excuse much less by a person who is

a law graduate himself."

This Court, therefore, does not deem it an appropriate case for exercise of discretionary jurisdiction under Article 226 of the Constitution of India and allow the petitioner to assail the order of penalty dated 18.08.2018 removing the petitioner from service. The order does not suffer from any illegality.

This Court, therefore, refuses to interfere also with the order of the Appellate Authority dated 08.08.2019 issued by the D.I.G.