
(2008) 05 PAT CK 0071
In the Patna High Court
Case No : CWJC No. 12937 of 2004

Prem Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

General Clauses Act, 1897 — Section 27

Citation : (2008) 3 PLJR 202

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Pramod Mishra and Arun Kr, for the Appellant; Sandeep Kumar, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the Respondents. Petitioner at the relevant time served as a constable in the Central Industrial Security Force, has questioned the validity of the removal order dated 3.4.2003, Annexure-5 as also the appellate order dated 15.5.2003, Annexure-6 and the revisional order dated 2.7.2004, Annexure-8, passed in connection with a departmental proceeding initiated for two charges, namely, unauthorized over-stayal beyond the period of sanctioned leave with effect from 18.9.2001 to 5.12.2001 and for desertion with effect from 6.12.2001 to 21.6.2002.

2. From the enquiry report dated 15.1.2003, Annexure-3, it appears that charge no. 1 has not been proved as during the period of over-stayal, he has been found to be ill with intimation to the authorities. So far charge no. 2 is concerned, the same has been proved as he has been found deserter for 198 days during the period 6.12.2001 to 21.6.2002. While holding him guilty of the charge of deserter, the Enquiry Officer has noticed the fact that he was being treated for mental illness for the period 6.12.2001 to 2.2.2002 at Barbiga Primary Health Centre and Kanke Mental Hospital and for fever, vomiting and jaundice during the period between 4.2.2002 to 18.4.2002 as also for arthritis during the period 19.4.2002 to 19.6.2002 and in that connection has observed that if the aforesaid

ailments were the result of the medicine advised then the delinquent constable ought not to have taken such medicine and on that basis has concluded that without there being any ailment, he has been a deserter for 198 days.

3. Learned counsel for the petitioner submitted that the genuineness of the prescriptions and certificates dated 18.12.2001, 8.1.2002, 19.1.2002, 2.2.2002, 4.2.2002, 18.4.2002, 19.4.2002, 20.5.2002, 3.6.2002, 10.6.2002 and 20.6.2002, as contained in Annexure-9 series to the supplementary affidavit filed on behalf of the petitioner on 1.12.2005 having not been disputed together with the fact that intimation about the illness of the petitioner during the aforesaid period between 6.12.2001 to 2.2.2002, 4.2.2002 to 18.4.2002 and 19.4.2002 to 19.6.2002 was given to the authorities through registered post and the receipts showing dispatch through registered post was also placed before the Enquiry Officer, in the circumstances, this Court relying on the provisions contained in Section 27 of the General Clauses Act should accept the contents of the prescriptions and certificates, as contained in Annexure-9 series and should hold that the petitioner was not deserter for 198 days for the period 6.12.2001 to 21.6.2002. In support of such plea, learned counsel for the petitioner has placed reliance to the case of Mithilesh Kumar Pathak vs. The Union of India & Ors., reported in 2007 (Supp.) PLJR 93, paragraphs 14 and 15.

4. Learned counsel for the Respondents have supported the findings recorded in the report of the Enquiry Officer, Annexure-3 as also the removal, appellate and revisional orders as contained in Annexures-5, 6 and 8 to this application and has submitted that the authorities below having held that the petitioner was feigning illness during the period between 6.12.2001 to 21.6.2002 for 198 days, this Court should not interfere with the finding that he was deserter for 198 days. In support of such submission, he has placed reliance on the cases of Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, , Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, and Ram Saran Vs. I.G. of Police, CRPF and Others,

5. From the enquiry report as also the impugned removal, appellate and revisional orders, as contained in Annexures-5, 6 and 8, it does not appear that the correctness of the prescriptions and certificates, as contained in Annexure-9 series has been disputed by the authorities. The Enquiry Officer, while discussing charge no. 2, however, has observed that if petitioner was having ill effect of the medicines advised then why was he taking such medicines. For ready reference, such observation of the Enquiry Officer is quoted hereinbelow:-

It is thus evident that the petitioner was suffering from various ailments during the period between 6.12.2001 to 21.6.2002 may be on account of medication, but such medication was on the basis of medical advice and respondent-authorities ought to have appreciated such fact.

6. In the circumstances, I am of the view that petitioner, on account of ill health during the period between 6.12.2001 to 21.6.2002, could not report for his duty and the finding that he was deserter during the said period has been recorded

without appreciating the contents of prescriptions and certificates dated 18.12.2001, 8.1.2002, 19.1.2002, 2.2.2002, 4.2.2002, 18.4.2002, 19.4.2002, 20.5.2002, 3.6.2002, 10.6.2002 and 20.6.2002, Annexure-9 series referred to in the enquiry report, consequently removal, appellate and revisional orders dated 3.4.2003, 15.5.2003 and 2.7.2004, as contained in Annexures-5, 6 and 8 are set aside and the matter is remitted back to the Disciplinary Authority to reconsider the matter taking into account the prescriptions and certificates, as contained in Annexure-9 series to this application. Reinstatement of the petitioner, however, shall be subject to the fresh orders passed by the Disciplinary Authority in the light of the prescriptions and certificates contained in Annexures-9 series, which order the Disciplinary Authority shall be obliged to pass as early as possible, in any case within 60 days from the date of receipt/ production of a copy of this order. This writ application is, accordingly, disposed of.