

(2005) 08 PAT CK 0106
In the Patna High Court
Case No : CWJC No. 4561 of 2002

Rakesh Kumar Chauhan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Citation : (2005) 4 PLJR 249

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties. This writ application is directed against the orders passed by the respondent authorities dismissing the petitioner from services.

2. According to the case of the petitioner, he was appointed on the post of Police Constable in the district of Jehanabad. Thereafter, he was sent for training in B.M.P., Tati Silve, Ranchi. During the course of training he absented for which a departmental proceeding No. 1 of 1993 was initiated against him where he was found guilty and accordingly increment for six months was stopped. However, the petitioner again absented on several occasions. A departmental proceeding again was initiated being departmental case No. 1 of 1998. Articles of charges as contained in Annexure 1 was served upon him and the enquiry was conducted and after conclusion of the enquiry he was found guilty of desertion and the punishment of removal from services was passed.

3. It is submitted by learned counsel for the petitioner that the petitioner had absented on few dates. The total period of his absence was only fifty days and, therefore, a lenient view could have been taken. It is also submitted by learned counsel that no subsistence allowance was paid to the petitioner during the period of his suspension and on that account itself the order of punishment is not sustainable.

4. J.C. to S.C. 10 on the contrary, submitted that the petitioner was habitual absconder and at no point of time he had taken leave for his absence and, therefore, it was a case of gross misconduct. It is further submitted that during enquiry the petitioner could not produce satisfactory explanation for his absence and the authorities owing to his past antecedent which was part of the charge, passed the order of dismissal.

5. It appears from the materials on record that the petitioner from the very date of his deputation in B.M.P., Tatisilve, started fleeing away from training without permission of the authorities. His past conduct was also taken into consideration by the authorities as it was part of the charges and even when his increment for six months was stopped by way of correctional measure, the petitioner did not reform himself and he started fleeing from training. It further appears that the enquiry was conducted in presence of the petitioner where witnesses were examined but the petitioner failed to produce any document showing that he had taken leave/permission of the authorities for his absence. During enquiry the charges were found to be proved against him and thus, he was held to be a deserter by the disciplinary authority and accordingly the order of dismissal was passed. Learned counsel for the petitioner, now, submits that sufficient opportunity was not given to the petitioner to defend himself and secondly that the punishment inflicted upon the petitioner is disproportionate to the guilt.

6. The charge of desertion constitutes a case of gross misconduct. The authorities, on enquiry, found the petitioner as deserter. The punishment of removal from service therefore, cannot be said to be disproportionate to the guilt. Keeping in view the fact that even after passing of the order of stoppage of his increment for six months, the petitioner could not correct himself and again started fleeing away from the training.

7. Having heard counsel for the parties and for the reasons aforementioned, I do not find any reason to interfere in the matter. This application is accordingly dismissed.