
(2007) 04 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 5455 of 2004

Santosh Kumar Upadhyay

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Citation : (2007) PLJR 198

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the parties. The petitioner seeks quashing of the order of dismissal contained in annexure-1 dated 19.11.2000. He also want quashing of the order contained in annexure-3 which is the appellate order as well as annexure-4, the order passed by D.I.G. in his revisional capacity.

2. Admitted position is that the petitioner was deputed on official duty from Tripura to go to Jamshedpur on 7.11.2000 Thereafter, he never reported back to the unit. He remained absent without any information from 16.11.2000 to 19.11.2001. Notices were sent to the petitioner but the same did not beget any response. The court of enquiry was set up in terms of the provisions of C.R.P.F. and the petitioner was declared deserter. The authorities thereafter in their wisdom decided to hold a departmental proceeding. A departmental enquiry was held no doubt in absence of the petitioner because as already indicated above he was not available on the permanent address indicated in the records of the department. In departmental enquiry the factum of unauthorised absence of the petitioner from 16.11.2000 to 19.11.2001 i.e. for more than a year was established. A copy of the enquiry report was forwarded to the petitioner and he was given opportunity to file his show cause, but since nothing was filed on his behalf, the disciplinary authority in its wisdom decided to impose order of dismissal against him.

3. Subsequently the father of the petitioner turned up that his son has lost mental balance in the meanwhile and therefore the order of punishment passed against him ought to be recalled. The petitioner also filed an application for his reinstatement to the post. The authority examined the matter in the light of the representations of the father as well as the petitioner but found that the explanation offered was not tenable as it was only to cover up the unexplained absence of the petitioner for more than a year. The authority therefore even at the appellate stage despite re-examining the matter came to the conclusion that the petitioner did not have any valid, or mitigating circumstances based on which the order of dismissal passed against him could be undone. The revisional authority in its order after due appraisal came to the same conclusion.

4. In the writ application the petitioner does not bring on record any evidence in support of various averments he has made in the writ application. There are only statements in the writ application without any supporting evidence. Even this Court could have tried to examine if the case of the petitioner was actually worth interference or not. Mere assertions are not good enough for a court to proceed in the matter where the various authorities have already examined the issue and come to the conclusion against the petitioner.

5. The petitioner states that he was not given an opportunity and the order passed against him is an ex parte order. To this this Court can only observe that the notices sent to the petitioner on the known address available to the respondents and in terms of the provisions under C.R.P.F a court of enquiry has to be held when a person is declared deserter. After he is declared deserter a departmental enquiry is to be held. The petitioner did not bother to respond earlier but only when the order of dismissal was passed and communicated to him that for the first time his father came with a mercy petition.

6. In view of the factual position which has been taken note of above. I do not find any legal infirmity in the orders which have been passed against the petitioner. The story or explanation devoid of any evidence on record cannot be used as a ground for undoing a decision of dismissal passed against a deserter i.e. the petitioner. This writ application is accordingly dismissed.