

(2007) 05 PAT CK 0071
In the Patna High Court

Sunil Kumar Gupta

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Citation : (2007) 05 PAT CK 0071

Judgement

J.N. Bhatt, C.J.—In this Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court, the appellant original writ petitioner has challenged the judgement of the learned Single Judge, recorded on 9.2.2007 in CWJC No. 12387 of 2003, whereby the challenge of the appellant-original writ petitioner against his dismissal from service as constable in Central Reserve Police Force, (CRPF), on the ground of proved misconduct, came to be dismissed.

2. We have heard the learned Counsels for the parties. We have also examined the facts emerging from the records of the present case. The impugned judgement, its content and colour, extent and context have also been considered. The service jurisprudence principles, relevant to such type of cases, are also examined. Initially, let it be mentioned that the appellant - original writ petitioner, constable on general duty in CRPF, was departmentally dealt with and found delinquent and, therefore, dismissal order came to be recorded. The appellant - original writ petitioner on several occasions went on leave without permission and on some occasions overstayed after the sanctioned leave without intimation to the authority concerned. In all, there would be seven such lapses involving longer and longer period of absence including the last absence which entailed the penalty which is under challenge.

3. The only contention, which is advanced before us is about proportionality of the sentence imposed on the appellant. It is submitted that the punishment awarded to the appellant - original writ petitioner is harsh and very excessive and shocking to the conscience and, therefore, the Court should take a lenient view.

4. This submission may, prima facie, appear to be alluring but not acceptable and

attractive in the factual backdrop of the present case. Ordinarily, it is for the master to consider the size and quantum of the punishment in the light of the proved facts and delinquency against the employee. In a writ jurisdiction, unless and until it is shown that the punishment imposed is shocking to the judicial conscience, a lighter or different view will not be possible to interfere with the proceedings of the department which culminated into punishment. A person remaining absent from duty, may or may not be visited with the consequences of dismissal from service, but here, we are dealing with a case of a paramilitary jawan who has been in the habit of remaining on leave without any authority and sanction and had, on some occasions, overstayed without any further authority or permission. It is in these circumstances, the dereliction of duty and escapism from service are factors which are paramount to be considered for awarding the punishment. If an employee of a paramilitary force or jawan indulges in such type of activities and remains negligent not once, but more than six times, he cannot be leniently dealt with. The punishment of dismissal in such a fact scenario cannot be said to be disproportionate to the delinquency proved against the appellant - original writ petitioner. The view which we are going to take is very much reinforced by the ratio of the decision in the case of Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, , where, in similar case, it has been held that dismissal from service for overstaying beyond the sanctioned leave could not be said to be excessive of the delinquency established.

5. In the result, this Letters Patent Appeal must fail. It shall accordingly stand dismissed. No costs.