
(2018) 03 PAT CK 0022

In the Patna High Court

Case No : Letters Patent Appeal No.1756 of 2016

Union Of India

APPELLANT

Vs

Md. Shahzad Hussain

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Citation : (2018) 3 PLJR 404

Hon'ble Judges : AJAY KUMAR TRIPATHI;NILU AGRAWAL

Bench : Division Bench

Advocate : Rajiv Verma;Karuna Nath Sahay;

Final Decision : Allowed

Judgement

1.Heard learned Additional Solicitor General, assisted by Mr. Anshuman Singh, for the Union of India and learned senior counsel for the private

respondent.

2.This intra-Court appeal has been preferred by the Union of India against the order dated 08.04.2016 passed by the learned single Judge in the

C.W.J.C. No. 19293 of 2012. The writ application of the private respondent was allowed on the ground that the order or punishment of

compulsory retirement and declaration of the private respondent as a deserter is harsh and excessive and, therefore, required reconsideration. The

order of punishments were quashed and the matter was remanded back to the Inspector General of Police, C.R.P.F., to pass any other order than

dismissal/removal/compulsory retirement.

3.The facts of the case is that the private respondent, who was working as a constable in 159 Battalion of C.R.P.F. posted at Gaya in the year

2009, was permitted to avail one day station leave on the so-called ground of

serious illness of his wife. He assured the authorities that he will report back immediately since he was deployed for election duty at Imamganj in the district of Gaya. The one day leave converted into 344 days of absence, because from 19.04.2009 till 28.03.2010, the private respondent has not reported for duty though he is supposed to have sent communications to the authorities taking the plea that he was taken ill and was incapable to report to the Unit due to the ailment, which primarily seems to be Hepatitis. No doubt, a telegram was sent on 21.04.2009, a Doctor's certificate dated 19.04.2009 was made available as justification for extending the leave, but despite the authorities not granting any permission, the private respondent chose to remain absent from duty for almost a year.

4. Since the private respondent remained absent without permission, a warrant of arrest was procured from the Court of Chief Judicial Magistrate on 29.04.2009. A court of enquiry was also ordered to be held under Rule 31(a) of the C.R.P.F. Rules, 1955, read with Standing Order No. 19 of 2001. The court of enquiry declared him to be a deserter for having overstayed his leave with effect from 20.04.2009 without permission and thereafter an article of charges was also framed on 13.10.2009 and an enquiry officer was appointed. When the enquiry was initiated, the private respondent suddenly shows up before the Unit on 28.03.2010 and the enquiry proceeded thereafter. He was given full opportunity to file his defence and produce the documents and witnesses which he wanted to press into service. The enquiry was completed, the finding of guilt was recorded and thereafter order of punishment of compulsory retirement was passed by the disciplinary authority and upheld by the appellate authority.

5. Against the order of punishment, writ application came to be filed. Plea was taken that no proper opportunity was provided to defend himself before the court of enquiry which declared him deserter. To this, this Court can only observe that the private respondent cannot draw advantage of his own wrong. There are adequate informations and notices served upon him during the prolonged absence in addition to that since he was a constable in a Para Military Force, having put in more than 22 years of service, it is expected that he knew the consequences of such prolonged

absence without authorisation and leave granted by the competent authority. Therefore, the fact of his absence for a period of almost a year and

not reporting to the Unit is established since that aspect is not a matter of dispute. The explanation sought to be offered for the absence does take

away the reason for declaration of the private respondent as a deserter.

6. So far as period of absence is concerned, the plea taken by the private respondent that he had filed several representations for extension of leave

also does not help him in any manner because filing of representations by itself does not mean allowing representations. There is nothing on record

to show that any authority much less the disciplinary authority or the Company Commandant granted any extension of leave to the private

respondent despite his so-called plea taken that he was unwell.

7. We have also gone through the materials produced during the course of enquiry and the finding given therein. We are convinced that the material

and evidence showing illness was more a kind of procured documents to justify the absence. What is of significance is that some of the pathological

reports or the Doctor's prescription only relate to the period May, 2009 till June, 2009. After June, 2009, there is nothing on record to show

that the private respondent was not in a position to report to the Unit or was incapable of performing any responsibility or taking the journey from

his home till where the Unit was stationed. Even if the argument or the defence of the private respondent is taken that he fell ill and was suffering

from Jaundice, that period ends sometime in June, 2009 and there is complete silence from July, 2008 till end of March, 2010.

8. In other words, there is no justification of the private respondent for his absence for almost a period of eight months and for a person, who

belongs to a disciplined force, such leeway or liberty is not available or can be made available.

9. The learned single Judge has not really gone into the merit of the finding given by the enquiry officer or any infirmity as such emerging from the

process which was adopted in conduct of enquiry, but the whole conclusion and the reason for interfering with the order of punishment of

compulsory retirement has been based on the principle of disproportionality.

10. A person can fall ill and benefit of doubt can be given. But even if that benefit is extended, the bonafide of such plea has to be also tested. In the

present case, the plea of Hepatitis, no doubt, has been taken, but there is no evidence or material to show that the private respondent was so unwell because of Hepatitis that he was confined to bed for 11 months and in absence of any material or evidence to show as to what was happening to the private respondent between June, 2009 till March, 2010, that period of absence will be treated to be voluntary absence, which is a substantial period of absence that too during a period when the services of the private respondent was required for conduct of election, which also is a call of duty towards the nation.

11.This Court, therefore, is not willing to give the benefit to the private respondent of his illness for a period 11 months since he chose voluntarily not to perform his duty and also not to report to the Unit for substantial period of time. It was in fitness of things that an order of punishment keeping in mind the finding given by the enquiry officer was warranted.

12.The Court notices that though one day leave was taken on the ground of serious illness of his wife, not much has been said or evidence produced about her illness. So the leave seems to have been taken on a lie.

13.One of the reasons why the disciplinary authority passed the order of compulsory retirement was because of the long period of duty which the private respondent had earlier performed, but then, that by itself is the reason why the private respondent earned reprieve from dismissal from service so that he is not denied the benefit of pension after his removal.

14.In these circumstances, we do not feel that the learned single Judge was correct that the order of punishment, in the circumstances and the Force to which the private respondent belongs, did not deserve to be removed from service. It is not a case of disproportionate punishment. The order of removal to that extent cannot be said to be harsh or excessive if there was an order of dismissal may be the same argument or principle may have been applied or extended.

15.In totality, therefore, the appeal is allowed. The order of the learned single Judge dated 08.04.2016 setting aside the order of punishment and remitting the matter for reconsideration requires to be interfered with and the same is set aside to that extent. The order of compulsory retirement as well as declaration as deserter does not require interference.

16. Appeal is allowed to the extent indicated above.