

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.617 of 2019
In
Civil Writ Jurisdiction Case No.12185 of 2014

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Sumit Kumar @ Sumit Kumar Tiwary S/o Mukteshwar Rai of village
Dumraon Dakhintola P.O.- P.S. Dumraon Dist Buxar

... .. Appellant/s

Versus

1. The Union of India through its Home Secretary, Union of India, New Delhi .
2. The Director General Central Reserve Police Force, CGO Complex, N Block, Lodhi Road, New Delhi
3. The Inspector General Central Reserve Police Force, Central Range, Gomti Nagar, Lucknow, U.P.
4. The Deputy Inspector General Central Reserve Police Force, Lucknow Range, U.P.
5. The Commandant Central Reserve Police Force, 215 Battalion, Malaypur, Jamui, Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Mrigank Mauli, Adv.
Mr.Sanjay Kumar, Adv.
For the Respondent/s : Mr.S.D.Sanjay, AD SG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 13-08-2024

The present LPA is directed against the order dated 01.04.2019 passed in CWJC No. 12185 of 2014 whereby the learned Single Judge dismissed the writ petition filed by the appellant.

2. In civil writ jurisdiction, the appellant has prayed for the following relief(s):-

I. Non consideration of medical



is against Article 45 and 35 of the Constitution of India.

II. Ordered to cross examine then and there is against Apex/High court order vide AIR 1964 SC 704.

Kesoram cotton Mills Vs. Gangadhar 2014(1)PLJR 214.

III. Without fixing date for examination of DW proceeding conducted is held unconstitutional by Hon'ble Patna High court vide 1994 BBCJ 97.

IV. Charge is of absence due to sufficient reason so order of dismissal is hard and disproportionate in the light of Apex/ High court order 1983)2 S.C.C.442 1996(1) PLJR 129.

V. Not deciding revision is arbitrary illegal and malafide.

3. Briefly stated facts of the case are that the appellant joined the services of Central Reserve Police Force (hereinafter referred to as 'CRPF') in the year 2010 as a Constable and till 24.10.2013 he was posted at Malaypur, Jamui. The appellant made an application on 14.05.2012 for grant of earned leave as mother of the appellant was diagnosed with Cancer and appellant was required to attend her medical needs. The appellant was directed to report to the Unit Headquarters on 21.05.2012. On 24.05.2012 it was discovered that the appellant deserted the Unit Headquarters without any sanctioned leave



w.e.f. 23.05.2012. It is further averred that appellant sent representation on various dates for extension of his leave through postal service but he was declared absconder on account of absence from duty w.e.f. 23.05.2012 to 04.12.2012 without any sanctioned leave for the period of 196 days and unauthorized absence of the appellant from duty led to initiation of departmental inquiry. Vide office order dated 25.06.2013 inquiry officer was appointed and after completion of inquiry, report was submitted to disciplinary authority. The disciplinary authority/respondent no. 5, considering the relevant materials available on record and the defence submitted by the appellant, passed the order of dismissal on 26.10.2013. Against the order of dismissal dated 26.10.2013, the appellant filed appeal before the appellate authority/respondent no. 4 but the said appeal was dismissed on 03.03.2014. After dismissal of appeal, the appellant filed revision before the revisional authority/respondent no. 3 and the said revision was also dismissed by respondent no. 3 on 30.06.2014. Being aggrieved by the orders passed by the respondent authorities, the appellant filed CWJC No. 12185 of 2014 which was also dismissed by the learned Single Judge. Hence, the present LPA.

4. Learned counsel for the appellant submitted



that the learned Single Judge has failed to appreciate that the quantum of punishment inflicted upon the appellant was grossly disproportionate to the alleged misconduct committed by the appellant. Learned counsel further submitted that the learned Single Judge has also failed to appreciate that mother of the appellant was diagnosed with Cancer and the appellant was only one to take care of his mother and even on several occasions request was made by the appellant for extension of his leave but same had been rejected. Learned counsel further submitted that there cannot be unauthorized absence where appellant has already applied for leave mentioning that his mother was suffering from Cancer and she was fighting for the last breath of her life. Learned counsel further submitted that the learned Single Judge failed to appreciate that respondent authority has not produced any evidence as to why they have not considered the application where there was reason assigned for taking the leave for some period and for some period applied leave through post and it was neither accepted nor it was rejected.

5. Learned counsel for the respondents submitted that the appellant remained absent for a period from 23.05.2012 to 04.12.2012 and the departmental inquiry was ordered to be initiated against the appellant. He further submitted that



appellant without taking permission from competent authority deserted the camp on 23.05.2012 and according to procedure, FIR was registered at P.S. Ahiyapur, Muzaffarpur and also warrant of arrest was issued against the appellant. He further submitted that after remaining absent for 196 days departmental inquiry was initiated against the appellant vide office order dated 30.04.2013. He further submitted that Sri Arvind P. Anand, Deputy Commandant was appointed as inquiry officer vide office order dated 25.06.2013. After completion of departmental inquiry, the inquiry officer submitted the inquiry report to the Disciplinary Authority and in departmental inquiry, charges framed against the appellant were proved and the Disciplinary Authority considering the principle of natural justice delivered a copy of the inquiry report to the appellant vide letter no. P.VIII-1/13-Estt-2 dated 03.10.2013 and appellant was allowed to file his defence. Thereafter the Disciplinary Authority after considering the materials available on record and defence submitted by the appellant, passed order of dismissal from service on 26.10.2013 and the appellate authority/respondent no. 4 vide order dated 03.03.2014 affirmed the order of dismissal and in same way, the revisional authority vide order dated 30.06.2014 has also affirmed the order of



dismissal. He further submitted that the appellant was appointed in CRPF and the area where he was posted is naxalite area and unauthorized absence from said place might cause misadventure and the act of misconduct committed by the appellant cannot be justified by any stretch of imagination for the service of CRPF. He further submitted that the orders passed by the respondents authority are based on sound reasoning of law and the learned Single Judge has rightly dismissed the writ petition filed by the appellant and hence, no interference is needed.

6. From perusal of the material available on record, it is found that the appellant produced documents regarding treatment of his mother in support of his contention that his mother was suffering from Cancer but the said documents have not been taken into account either by any of the respondent authorities or by the learned Single Judge. The appellant has forwarded application for extension of leave on many occasions on the ground that his mother was suffering from Cancer but the same either accepted or rejected.

7. Learned counsel for the appellant submits that imposition of major penalty for remaining absent for 196 days would be too harsh. In support of his contention, learned counsel for the appellant placed reliance on the Hon'ble



Supreme Court decision passed in the case of *Yasodhar Kamat vs. Director General, Border Security Force and Others* reported in *(2021) 13 SCC 333* in which the Hon'ble Supreme Court observed that imposition of penalty of dismissal would be disproportionate having regard to the material which has emerged from the record.

8. In the present case, the appellant is found to be absent from duty and he gave explanation that his mother was diagnosed with Cancer and he had applied leave for treatment of his mother and it was beyond his control. Keeping in view all the facts and circumstances of the case, we are very much conscious of the fact that absence of the appellant from duty cannot be equated with the person who is said to be unauthorized absence from his duty. On the said score, dismissal of appellant from service is totally disproportionate to the conduct committed by the appellant. For the end of justice, we have to take sympathetic approach towards the appellant in the given facts and circumstances of the case that appellant has reason to leave the place of posting.

9. Keeping in view the discussions made above, the appellant has made out a case so as to interfere with the order of the learned Single Judge dated 01.04.2019 passed in



CWJC No. 12185 of 2014. Accordingly, order dated 01.04.2019 passed by the learned Single Judge in CWJC No. 12185 of 2014 is hereby set aside and the present LPA No. 617 of 2019 is allowed. Consequently, dismissal order dated 26.10.2013 passed by respondent no. 5, appellate order dated 03.03.2014 passed by respondent no. 4 and revisional order dated 30.06.2014 passed by respondent no. 3 are also, hereby, set aside.

10. The concerned respondents are hereby directed to reinstate the service of the appellant and regulate services in accordance with law including extending monetary benefits to the appellant and his unauthorized absence be treated as leave in his credit as per provision applicable in the case of appellant, while imposing any of the minor penalty. The above exercise shall be undertaken within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	05.08.2024.
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