

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.83 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.10321 of 2014**

=====

Parmeshwar Paswan, Son of Late Ram Kishun Paswan, Resident of Village-Pahalm, P.O.-Paharpur, P.S.-Salkhua, District-Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Munger Region, Munger.
4. The Superintendent of Police, Munger.

... .. Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Ashok Kumar Chaudhary, Advocate  
Mr. Binit Kumar, Advocate  
Mr. Ashutosh Ankit, Advocate

For the Respondent/s : Mr. Manish Dhari Singh, AC to AG

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 23-04-2019**

Heard learned counsel for the appellant and perused the impugned judgement dated 13<sup>th</sup> December, 2017 whereby the learned Single Judge has dismissed the writ petition to a challenge raised to the order of dismissal dated 12<sup>th</sup> January, 2013.

The background in which the appellant faced the dismissal was that he was a Constable and he was given custody of an under trial prisoner for being taken to Patna Medical College and Hospital. The fact is that after his outdoor treatment he was not admitted in Hospital and then he was lodged in Janta Hotel, G.M. Mitra Road, Patna. It has come on record in the enquiry that the Hotel rooms were booked and



the mother and the wife of the under trial prisoner were also lodged in the same Hotel and the bookings were made from before the arrival of the said prisoner Amit Mandal.

The stay of the prisoner in the said Hotel is admitted from 8<sup>th</sup> of June, 2011 till 16<sup>th</sup> of June, 2011 when at about 3 P.M. it is alleged that he absconded and escaped from the Hotel. The information was given to the authorities only on the next day, i.e., 17<sup>th</sup> June, 2011.

The enquiry was conducted. A show cause was issued to the appellant and a reply to the said show cause was also tendered, copy whereof is Annexure-6 to the writ petition. The main defence taken was that there was no negligence on the part of the appellant and since there was no provision for admitting an under trial prisoner upon being treated as an outdoor patient, therefore, preparations were being made for bringing him back, but at the same time in view of non-availability of any accommodation, the under trial was lodged in the Hotel. A further defence has been taken that if the appellant had any intention to help the under trial to escape, the same could have been done before and he would not have waited for eight days. It has also been stated in the defence that the said under trial had also escaped previously and no such warning had been given to the appellant about the said character of the said under trial prisoner.

After having considered the defence, the appellant came to be dismissed from service whereafter he filed an appeal which was also dismissed by the Deputy Inspector General of Police giving rise to a



memorial filed before the Director General of Police, Bihar. The challenge raised to the said proceedings in CWJC No.10321 of 2014 ultimately resulted in the dismissal of the same upholding the order passed by the authorities dispensing with the services of the appellant.

Learned counsel for the appellant submits that there is a procedural violation inasmuch as certain documents relating to the manner in which the communication was made with regard to the aforesaid incident was not shown to the appellant. This has, therefore, vitiated the enquiry and even the examination of witnesses was not carried out in accordance with the procedure prescribed in law. He has further emphasised that to attribute negligence only on the appellant is not in conformity with paragraph 573 of the Bihar Police Manual for which it is urged that in a matter of such escape where an allegation is of negligence it is the higher officials who are to be hauled up first and no such action ought to have been taken.

Another defence had been taken in the show cause that when the under trial had earlier escaped then in that incident, no such harsh step or punishment was awarded to the then police officer and therefore, the extreme penalty of dismissal is not only disproportionate but is unwarranted on the facts of the given case.

Having considered the submissions raised, we find that the defence of the appellant was categorically considered and, in our considered opinion, the appellant had full and a fair opportunity adequate enough to allow him to raise all possible defences. As



mentioned above, the nature of defence which was raised by the appellant itself demonstrates that there was no denial about the fact that the appellant did not inform the lodging of the under trial in a Hotel to his superior authority. Learned counsel submits that there was a Havaldar also accompanying the said under trial prisoner and it was the duty of these officials to have communicated the higher authorities.

We do not agree with this submission raised that an under trial was allowed to enjoy accommodation for eight days in a room without information to the higher authorities about the place of his lodging which was in violation of Rules and was beyond the competence of the appellant to have detained him and allowed to stay in a Hotel. The negligence therefore, has rightly been attributed to the appellant and in the given circumstances and the background in which the under trial had attempted a second escape with the help of the family members in which he succeeded and in the background that the Hotel rooms had been booked from before only we cannot come to a different conclusion than what has been arrived at by the authorities or by the learned Single Judge. The under trial is stated to have been apprehended later on from Delhi.

It is also the contention of the appellant that the procedural violation also manifested itself when no Presenting Officer had been appointed as a result of which the appellant was not in a position to present his case in a substantially appropriate way.



We do not agree with this submission the reason being the reply given by the appellant in his show cause not only displays his excellent way of presentation of facts but he has also quoted the Rules in his show cause to indicate that he was fully aware of the entire position of law and the mere absence of the Presenting Officer therefore does not prejudice his cause.

We, therefore, do not find any merit in this appeal and the same is accordingly dismissed.

**(Amreshwar Pratap Sahi, CJ)**

**( Anjana Mishra, J)**

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2019
Transmission Date	

