
(2014) 11 JH CK 0032
In the Jharkhand High Court
Case No : W.P.(S) No. 4675 of 2005

Akhileshwar Prasad Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Citation : (2015) 2 AJR 55

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sudhir Kumar and Ranjeet Kr. Singh, Advocate for the Appellant;
Vikash Kumar, J.C. to A.G, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The petitioner is seeking quashing of the order of punishment of compulsory retirement dated 12.06.2001 passed by the Deputy Inspector General of Police, Bokaro Steel City, Bokaro, respondent No. 3. The Appellate order dated 31.01.2004 passed by the Director General of Police-cum-Inspector General of Police, Jharkhand, Ranchi in Appeal No. 03/2001 is also being challenged whereunder the order of punishment has been affirmed. The original order of compulsory retirement is at Annexure-2 while covering letter of the Appellate Order is annexed as Annexure-2, but the Appellate Order in fact is Annexure-D to the counter affidavit.

3. The petitioner, who joined service in 1973, was posted as Assistant Sub-Inspector of Police at Barora Police Station, Dhanbad during which period on account of an incident, a criminal case was lodged against him and he was also departmentally proceeded. In the criminal case i.e. Baghmara (Barora) P.S. Case No. 296 of 1993 the informant Sanjeet Kumar Mishra alleged that on 31.10.1993 between 11.00 A.M. to 12.30 P.M. while he along with four to five persons were playing cards at Barora Stadium Kali Mandir, the petitioner came there and caught hold of hair of one Manoj Beldar and thereafter shot at him by Firearm as

a result of which he fell down. The said injured victim was taken to the Hospital where Doctor declared him dead. The Departmental proceeding was initiated against the petitioner thereafter with a charge through Memo No. 487 dated 25.01.1994 issued by the Superintendent of Police, Dhanbad, Annexure-A to the counter affidavit. As per the charge sheet, the petitioner while being posted at Barora police station had gone on 31.10.1993 between 11.00 A.M. to 12.30 P.M. at Barora Stadium Kali Mandir where without any reason or occasion he caught hold of hair of one person and fired at him through his revolver which led to his death after reaching hospital. The name of the victim was Manoj Beldar. The FIR was registered for the said incident whereafter the petitioner was placed under suspension by district order No. 2997/93. Therefore, it was alleged that the conduct of the petitioner had lowered down the image of the police. He has shown indiscipline, lack of sense of duty and projected him as incompetent police officer. Pursuant to the departmental enquiry conducted, a report was submitted, which is at Annexure-B to the counter affidavit by the Conducting Officer and the Superintendent of Police, Dhanbad made a recommendation for imposing a stringent punishment on the petitioner as per Annexure-C i.e. a copy of the recommendation. Thereafter the order of punishment was passed by the Disciplinary Authority-cum-Deputy Inspector General of Police, Bokaro Steel City, Bokaro, which is at Annexure-2 after giving a finding that conduct of the petitioner was serious enough for imposition of major punishment. However, since he had served in police force for almost 28 years in a satisfactory manner instead of order of dismissal from service, punishment for compulsory retirement was imposed upon him. The order of the disciplinary authority, Annexure-2, specifically mentioned that he has considered the relevant materials adduced during the course of enquiry, the report of the enquiry officer, recommendation of the Superintendent of Police as also reply of the petitioner submitted on the show cause issued upon him against proposed order of dismissal. The other fact, which is to be noticed is that after the impugned order of punishment and the Appellate Order, the petitioner has been acquitted by the Court of learned Additional District and Sessions Judge, Fast Track Court No. 1, Dhanbad in Sessions Trial No. 226 of 1998 vide judgment dated 28.04.2005, Annexure-1. On the basis of these foundational facts, learned counsel for the petitioner has assailed the impugned order inter alia on the following grounds:-

(i) that enquiry conducted against the petitioner was on totally different line than the charge issued against him.

(ii) that no 2nd show cause was issued before passing of the order of punishment.

(iii) that in the criminal case based upon the same allegation of killing of one boy Manoj Beldar for which departmental proceeding was also initiated, the learned Court has acquitted him after holding that the prosecution has not been able to bring home the charges even after adducing of 13 witnesses. Learned counsel for the petitioner has referred to the contents of the enquiry report in order to suggest that apart from the officer in-charge of the police station, who was not

an eye witness, Sanjiv Kumar Mishra's statements have been taken where name were not shown as a witness. The enquiry has also proceeded on completely tangent line Independent of the charge made in the charge sheet. The judgment of acquittal has also been read out by the learned counsel for the petitioner to show that prosecution in spite of producing all materials and evidences available to them had failed to establish charge of murder against the petitioner. It is submitted that the petitioner himself had informed the officer in-charge of the police station about the incidence that he was brick batted by unruly boys who were playing game and indulged in betting. That aspect the matter was never enquired and he was proceeded on an allegation, which has not been substantiated in the criminal trial. He has been unfairly punished with compulsory retirement from service. Reliance has been placed upon a judgment rendered by the Hon''ble Supreme Court in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, , where in at para 26 it has been observed that enquiry officer cannot proceed independent of the charges against the delinquent and any punishment passed upon such enquiry is vitiated in law. Therefore, it is submitted that the impugned order be quashed.

4. Learned counsel for the respondent-State has at the outset tried to clear the controversy about the identity of Sanjiv Kumar Mishra and submitted that he is the same person namely Sanjeet Kumar Mishra, who had informed the police and on whose Fardbeyan, the FIR in question was registered. It is further submitted that departmental enquiry has been conducted on the basis of charges that the petitioner being a member of police force had indulged in indiscipline, shown lack of sense of duty while resorting to fire without any reason and killing an innocent boy Manoj Beldar in the process whereby the image of police force has been lowered down. It is submitted that departmental enquiry has been conducted on the basis of the settled principles of evidences i.e. on preponderances of probabilities as is applicable in such proceeding. Reference has been made to the judgment rendered by the Hon''ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, . Learned counsel for the respondents further submits that acquittal of the petitioner is based upon benefit of doubt. Such an acquittal even otherwise would not come to the benefit of the petitioner as the dismissal order was, not passed on the basis of his conviction rather than on the findings of departmental enquiry wherein enough opportunity was given to the petitioner. Reference has been made to the enquiry report in which various communications, which were sent to the petitioner to participate during the course of enquiry, have been referred to. Respondents have relied upon the judgment rendered by the Hon''ble Supreme Court in the case of The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, , para-11 thereof.

5. Finally it is submitted that department is fully justified in their action against the delinquent employee, who was responsible for lowering down the imago of police force as the public has to have full confidence in the image of police force. The conduct of the petitioner deserved to be accorded proper punishment. There is no infirmity in the impugned order imposing punishment of compulsory

retirement. Reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in the case of Commissioner of Police, New Delhi and Another Vs. Mehar Singh, , para-3 thereof.

6. Having heard learned counsel for the parties and on perusal of the pleadings and the materials on record, it appears that the petitioner was proceeded against departmentally when a criminal case was instituted on the fardbeyan of Sanjeet Kumar Mishra implicating him by name of having indulged in shoot and killing of one Manoj Beldar without any justification. The allegation contained in the charge sheet issued after registration of FIR also shown narration of the incidence, which was the basis for institution of the FIR. The respondent-department obviously was justified to take a decision to proceed against the petitioner when a criminal case of such serious nature has been instituted against the petitioner. It appears that thereafter the petitioner was given enough opportunity to participate in the departmental proceeding as various communications were issued upon him. The enquiry was conducted by the enquiry officer and in the said enquiry apart from officer in-charge of the police station, the statement of Sanjeet Kumar Mishra, were taken into account. It appear from the charge sheet itself Annexure-A that reference of Sanjiv Kumar Mishra and Sanjeet Kumar Mishra S/o. Rudra Nath Mishra has been made as a witness and who made written complaint. The petitioner, therefore, is not right in asserting that Sanjiv Kumar Mishra has nothing to do with the incidence and he was a total stranger whose statements have been recorded in the departmental proceeding.

7. The enquiry officer found the charges against the petitioner fully established on consideration of materials produced during the course of enquiry. Perusal of the enquiry report shows that the statement of the witness, officer in-charge and the Sanjeet Kumar Mishra, who was informant, have been taken into account for coming to such a finding. The whole issue was whether the conduct of the petitioner in indulging in such firing which resulted in the death of person was proper and behooving of a police officer or not. The petitioner is, therefore, not justified in alleging that enquiry proceeded on totally different line than what was alleged in the charge sheet. The contention of the petitioner that no 2nd show cause was issued upon him before passing the order of punishment also stands refuted on perusal of the order of punishment itself which clearly indicates that the petitioner was served with 2nd show cause notice before proposed punishment of dismissal from service. Thereafter he had submitted his reply raising various points which have been referred to in the impugned order of dismissal itself. In the writ petition, no such ground was taken by the petitioner that he was not served with 2nd show cause notice. Supplementary affidavit has been, however, filed today in support of aforesaid assertion that he was not issued 2nd show cause notice. Such an affidavit cannot be allowed to be entertained at this stage of hearing and it is not in consonance with the Jharkhand High Court Rules as well. The 3rd ground urged is in relation to acquittal of the petitioner. It is his contention that he has been acquitted of the

charges by the concerned Court when the prosecution had failed to establish the charges beyond reasonable doubt. However, on perusal of the judgment passed by the learned Additional District and Sessions Judge, FTC-I, Dhanbad, it appears that learned Court has acquitted the petitioner by giving benefit of doubt as the prosecution had not been able to establish the charges. Even otherwise the punishment of dismissal from service was not based upon the decision passed in a criminal case, rather on the basis of independent departmental enquiry which was conducted in a proper and fair manner after giving due opportunity to the petitioner and in compliance of the principle of natural justice.

8. Having considered all the relevant aspects of the matter, therefore, this Court is not satisfied that any ground of interference in the impugned order of punishment is made out neither the order suffers from perversity or violation of principles of natural justice.

9. Accordingly, the writ petition is dismissed.