
(2009) 11 JH CK 0147
In the Jharkhand High Court

Amod Krishna Jha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0147

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard Counsel for the parties.

2. Challenging the order dated 05.10.2004 (Annexure-1) whereby the petitioner was dismissed from service and also challenging the appellate order dated 06.03.2007 (Annexure-C to the counter affidavit of the respondents) whereby the petitioner's appeal against the impugned order of his dismissal from service was rejected, the petitioner has filed the present application praying for quashing the aforesaid orders and also for a direction upon the respondents to reinstate him in service.

3. The admitted facts of the petitioner's case are as follows:

Petitioner was appointed in the post of Constable on 01.01.1987 under the erstwhile State of Bihar. During his posting in the district of Chatra, he had fallen ill and could not resume his duties and consequently, he was served with a letter on 22.09.2004 seeking his explanation as to why action should not be taken against him for his absence from duty without sanction of leave.

The petitioner was thereafter informed that a departmental proceeding is contemplated against him on a proposed charge that he had absconded from his duty without sanction of leave.

The petitioner's specific contention is that no memorandum of charge whatsoever was ever served upon him and neither was he informed about the initiation of the departmental proceeding and yet, such proceeding is claimed to

have been not only initiated but concluded in absence of the petitioner and a finding has also been recorded by the officer conducting enquiry, holding that the charges against the petitioner is proved. The petitioner was subsequently informed by the impugned order of his dismissal, passed by the disciplinary authority that on the basis of the findings of the enquiry officer, the petitioner was found guilty of misconduct and therefore he was punished with dismissal from service.

4. Being aggrieved, the petitioner had filed appeal before the appellate authority against the impugned order of dismissal but the appeal was also dismissed.

5. Assailing the impugned orders, learned Counsel for the petitioner submits that the impugned order of dismissal of the petitioner is totally illegal, perverse, without application of mind and basically, in total violation of the procedure as laid down in Rule 843 and Rule 824 of the Bihar Police Manual and the provisions of the Civil Services Classification and Control Rules. Learned Counsel explains that the fact that the petitioner was not served with the memorandum of charge nor informed about the initiation of the departmental proceeding has been confirmed even by the respondents in as much as the specific queries raised by this Court on a earlier occasion when this matter was urged by the petitioner, this Court had directed the Counsel for the respondent State to file copies of all such documents which could confirm that the memorandum of charge was actually served upon the petitioner along with intimation of the initiation of the departmental proceeding. Learned Counsel submits that as it would appear, no such document has been produced by the respondents and even as the Counsel for the respondent State would admit, there is no such document available in the records of the respondents.

Learned Counsel adds further that without giving any opportunity of participating and defending himself in the departmental proceeding, the finding of guilt against the petitioner could not have been recorded and neither could any order of punishment, that too by way of dismissal from service, be recorded.

Learned Counsel argues further that even before proceeding to inflict extreme punishment upon the petitioner, he was not served with any show cause notice offering him an opportunity to explain as to why extreme punishment should not be imposed. This according to the learned counsel, is in total violation of the principles of natural justice.

6. Learned Counsel for the respondent State, by referring to specific paragraphs of the counter affidavit, would explain on the other hand, that the petitioner was informed about the initiation of the departmental proceeding and of the specific charges for which the proceeding was contemplated and he was called upon several times to appear at the proceeding and to defend himself, but the petitioner had intentionally evaded appearance. Learned Counsel adds that after conclusion of the departmental proceeding ex-parte and before inflicting the punishment upon him, a notice was issued to the petitioner at his address, by

post and yet, the petitioner did not respond.

7. On going through the relevant paragraphs of the counter affidavit in this context, it appears that though the respondents have claimed to have informed the petitioner of the contemplated departmental proceeding and of the memorandum of charge, but as informed by the learned Counsel for the respondents, no document has been brought on record to confirm such statements. It further appears that though the respondents claim to have sent the second show cause notice by registered post, but admittedly the same was not delivered to the petitioner at his address and the same was returned unserved.

8. The above facts amply demonstrate that the petitioner was not effectively informed either of the charge on which the departmental proceeding was contemplated or of the initiation of the departmental proceeding and was not given adequate opportunity to defend himself in the proceeding. Furthermore, the facts also demonstrate that the petitioner was not given opportunity to explain as to why the extreme punishment of dismissal from service should not be imposed against him. These lapses are in obvious violation of the mandatory, procedures as laid down in the provisions of Bihar Police Manual and Civil Services Classification and Control Rules and also against the principles of natural justice. These aspects of the petitioner's case, as appearing in the memorandum of appeal, have not been considered by the appellate authority, and on the contrary, the appeal filed by the petitioner has been dismissed by mere acceptance of the findings of the Inquiry Officer.

9. In the light of the above facts and circumstances and finding merit in this application, the same is allowed. Both the impugned orders dated 05.10.2004 (Annexure-1) passed by the disciplinary authority and the order dated 06.03.2007 (Annexure-C to the counter affidavit of the respondents) passed by the appellate authority are hereby quashed. The Respondents are therefore directed to forthwith reinstate the petitioner in service and to treat the period from the date of termination of his service, till the date of his reinstatement, as the period of his duty. The order of reinstatement shall be effective only if the petitioner has not crossed the age of superannuation.

The respondent authorities shall be at liberty to initiate any proceeding afresh, if they so desire, against the petitioner on any charges which they deem fit and proper.

Let a copy of this order be given, to the Counsel for the respondent State.