
(2011) 05 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 8750 of 1996

Anil Kumar Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 05 PAT CK 0007

Final Decision : Allowed

Judgement

Mihir Kumar Jha, J.—Heard Learned Counsel for the petitioner. No one appears on behalf of the State. Assailing the impugned order of punishment and its affirmance by the appellate authority, Mr. Shyama Prasad Mukherjee, learned Senior Counsel for the petitioner would submit that such punishment of dismissal from service of the petitioner is wholly disproportionate to the misconduct alleged against him which was confined only to his consuming liquor and misbehaving in the police line in the state of his intoxication in non-duty hours.

2. Mr. Mukherjee has further submitted that from the materials on record, it can also be gathered that the solitary misconduct of consuming liquor and creating commotion in the night of 7.1.1988 at about 8.30 P.M. was proven. In this content. he has also referred to the findings of the Enquiry Officer in the Enquiry Report as also the resultant order of punish-me" passed by the disciplinary authority.

3. In the considered opinion of this Court, the charge against the petitioner, being in two parts, namely, consuming liquor in non-duty hours was proved, inasmuch as, the petitioner was medically examined by the doctor at P.M.C.H., who had found the petitioner in a state of in-toxication. The other part of the charge that the petitioner had also misbehaved in the state of intoxication was not conclusively Dproved, inasmuch as, no witness had turned up to support that the petitioner had abused anyone near the office of Sergeant Major.

4. As a matter of fact, the Sergeant Major, being not an eye witness to the

occurrence, this part of allegation was sought to be substantiated by the oral evidence of Madhusudan Rai and Algu Singh but they too did not had specifically (sic) in course of departmental pro-ceeding as with regard to any specific utterances of the petitioner much less hurling abuse by him. In fact, in the deposition of Aigu Singh, he had only stated that the petitioner was in the state of intoxication and had not supported the allegation of hurling abuse to any person. The deposition of other witnesses, namely, Abhimanyu Sharma, Rabindra Sharma, Chandrika Yadav and Umesh Kumar was only to the extent that the petitioner had consumed liquor on account of his suffering from ailment of severe stomach pain and was desperately asking them to take him to the hospital for saving his life.

5. From the documentary evidence also, all that can be said to have been proved against the petitioner is that he had consumed liquor and was in the state of delirium in which a normal person can lose his sense leading to making of senseless utterances. Thus, from the documentary evidence also this much is only established that the petitioner had consumed liquor and was in the state of intoxication and thereby had lost his sense.

6. A question would, therefore, arise whether the most severe punishment of dismissal from service could be inflicted on the petitioner only for consuming liquor (Alcohol) in non-duty hours? There can be no two opinions that the petitioner was a member of a uniform service and had to maintain the highest degree of discipline even in non-duty hours. The explanation of the petitioner that he had consumed alcohol in order to lessen the unbearable pain in his stomach may or may not inspire confidence but then the alleged misconduct against him remains confined to consuming of liquor and losing his sense due to intoxication in non-duty hours.

7. For this part of proven misconduct, the punishment of dismissal from service of the petitioner is wholly disproportionate if not shocking to the conscience of this Court. Such misconduct cannot be regarded as a grave misconduct or continued misconduct rendering him completely unfit for police service. Such order of punishment of dismissal from service of the petitioner on account of consuming liquor in non-duty hours, therefore, is a wholly excessive and disproportionate punishment, not permissible even under Bihar Police Manual. Reference in this connection may be made to the judgment of the Apex Court in the case of Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, wherein, the Apex Court had found the punishment of removal from service of a police constable on account of his remaining absent from duty for more than two months as wholly excessive, inasmuch as, such misconduct on his part could not be termed as a grave misconduct or continued misconduct rendering him completely unfit for police service. The Apex Court in the aforesaid case of Shri Bhagwan Lal Arya (supra) had accordingly directed reinstatement by taking into account that the dismissal order was bad and the family of the aforesaid constable was dependent on him for survival as also on the ground that he could

not get another job on account of his advanced age.

8. In yet another case of Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others, the Apex Court had found the punishment awarded by Court Martial of dismissal from service and three months rigorous imprisonment to be severe and disproportionate as also arbitrary. In the case of Naik Sardar Singh (supra), the Apex Court had taken into account that an army jawan carrying more than permitted quota of wine bottle issued from Army Canteen while proceeding for home town on leave could not be subjected to punishment of dismissal from service as also undergoing rigorous imprisonment for a period, of three years. The Apex Court had, therefore, directed the army authorities to award a lesser punishment to S. Singh.

9. In the present case also, the position is more or less the same as was noticed by the Apex Court in the case of Shri Bhagwan Lal Arya (supra) and Ex-Naik Sardar Singh (supra). Here also, the punishment of dismissal from service for only consuming liquor in non-duty hours and becoming intoxicated cannot be held to be grave misconduct which atone can lead to most severe punishment of dismissal from service. Moreover, the petitioner is aged about 58 years and has remained out of service for nearly 22 years on account of his dismissal from service on 1.8.1989 under the order of punishment passed by the Senior Superintendent of Police, Patna.

10. From the perusal of the appellate order of the D.I.G., Central Range dated 16.10.1990 and the revisional order of the Zonal I.G. dated 7.10.1993, it does not appear that the petitioner was a habitual drunkard though in the memo of charge, it was alleged that the petitioner had repeatedly been indulging in such nasty incidents.

11. From the perusal of the on perusal of (sic) materials on record, it can be safely said that it was the solitary incident of misbehavior of the petitioner of getting drunk and becoming senseless, For such solitary incident of. misconduct, the petitioner could have been inflicted any other lesser punishment other than his dismissal/removal from service.

12. As noted above, the petitioner has remained out of service for a period of nearly 22 years, his date of dismissal being 1.8.1989. The order of punishment of dismissal from service is also wholly arbitrary and disproportionate and as such, the order of punishment, the appellate order and the revisional order as contained in Annexures-1, 2 & 3 respectively are hereby quashed. The petitioner shall be reinstated in service forthwith, subject to the condition that he will not be entitled for any back wages from the date of dismissal of his service to the date of reinstatement but, the aforesaid period of his absence shall be counted towards the qualifying service for the purpose of pay- merit of retirement benefit. In other words, the petitioner shall not be entitled to any service benefit.

13. It would also be open for the Senior Superintendent of Police to award any of the lesser order of punishment having due regard to the nature and circumstance

of the case and in the light of the aforesaid observations and findings of this Court.

14. The petitioner must report on duty within a period of eight weeks from today to take the benefit of this judgment. With the aforementioned observations and direction, this application is allowed only to the extent indicated above. There would be, however, no order as to costs.