

(2013) 10 JH CK 0016

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1861 of 2008

Arun Kumar Singh

APPELLANT

Vs

State of Jharkhand, The Director General-Inspector General
of Police, Dy. Inspector General of Police and Superintendent
of Police

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 1 AJR 791 : (2014) 1 JLJR 50

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.N Pathak, for the Appellant; Shivani Verma, for the Respondent

Judgement

S. Chandrashekhar, J.—Challenging the penalty order dated 31.01.2003 whereby the petitioner was dismissed from service and the appellate order dated 01.06.2005 whereby the appeal preferred by the petitioner has been dismissed by the appellate authority, the petitioner has approached this Court by filing the present writ petition. Heard learned counsel appearing for the parties and perused the documents on record.

2. A charge-memo was served upon the petitioner on the allegation that on 28.02.1999, he was found drunk and he fired in the air. He was caught by the persons present there otherwise, it would have resulted in some serious incident. An enquiry was conducted and the enquiry report dated 15.11.2002 was submitted. The petitioner was served the second show-cause notice by letter dated 04.12.2002 and he submitted his reply however, his defence was not accepted. The order of dismissal from service was passed on 31.01.2003 and the appeal preferred by the petitioner has also been dismissed by order dated 01.06.2005.

3. A counter-affidavit has been filed stating as under,

14. That the statements and allegation made in paragraph No. 11 of the writ

application under reply are wrong and denied. It is submitted in this connection that in spite of receipt of notice to appear in Departmental Proceeding No. 35/99, the petitioner never cooperated during proceeding for sake of delay. However, the proceeding has concluded on 15.11.2002 and finally on 31.1.2003. There is no delay in concluding the proceeding. It is submitted that paragraph No. 2 and 3 of page-2 of final conclusion of departmental proceeding (Annexure-2 of the writ application at page-16) will show that the petitioner never made cooperation in the proceeding.

15. That the statements made in paragraph No. 12 of the writ application under reply are wrong and denied. It is submitted in this connection that the Material witnesses were examined during departmental proceeding. Throughout examination of witnesses, the petitioner never made cooperation during proceeding as stated earlier.

16. That the statements made in paragraph No. 13 of the writ application under reply are wrong. It is submitted that Annexure-2 of the writ application filed by the petitioner itself shows that repeated notices were issued to the petitioner to appear before the proceeding but he did not appear for the sake of delay, hence, there is no question to give opportunity. Various opportunities were given to the petitioner.

4. The learned Senior Counsel appearing for the petitioner has submitted that though the charge against the petitioner is of being drunk, the petitioner was not medically examined during the departmental enquiry. Except one Shiv Lal Shaw, no other witness was produced by the department and therefore, the enquiry officer has reached at a wrong conclusion that the charge levelled against the petitioner stood proved. He has relied on various orders passed against other employees who were awarded lesser punishments for charge of firing gun-shots.

5. As against the above contention, Ms. Shivani Verma, learned counsel appearing for the respondents, has contended that the petitioner remained absconding for a long period of time and inspite of several reminders, he did not participate in the departmental proceeding and therefore, ultimately the departmental proceeding was concluded ex-parte. She has further submitted that the witness namely, Shiv Lal Shaw has categorically stated before the enquiry officer that on hearing noise, when he came out from the barrack, he saw the constable and the Hawaldar holding the petitioner who was drunk and thus, it is proved from the evidence on record that the petitioner was caught drunk at the place of occurrence. She further submits that since this fact has been found proved during the departmental enquiry, and the departmental authorities have concurred with the finding recorded by the enquiry officer, this Court may not interfere with the finding of fact recorded during the departmental proceeding.

6. On a perusal of the documents on record and more particularly the enquiry report, I find that the department has not examined any eye-witness in support of the charge levelled against the petitioner in so far as the allegation of firing is

concerned. It has also not come on record that the petitioner was examined medically. No doctor has been produced by the department during the departmental enquiry. The witness namely, Shiv Lal Shaw who was examined by the department has only said that when he heard the sound of firing, he came out from the barrack and he found that the petitioner was caught by a constable and the Hawaldar. The petitioner has specifically stated in his defence that he was never found drunk and he has never been punished in past

7. In Munna Lal Vs. Union of India (UOI) and Others, a case in which a constable was found drunk and the department examined three witnesses, the Hon''ble Supreme Court has held that the order of punishment of dismissal from service is excessive and disproportionate to the charge levelled against the delinquent employee.

8. It has also not come on record that the petitioner was served a copy of the enquiry report. The petitioner has specifically taken a plea that a copy of the enquiry report was not served upon the petitioner and in the counter-affidavit filed by the respondents this has not been denied by the respondents. From the penalty order dated 31.01.2003 also, I find that there is mention of second show-cause notice dated 04.12.2002 which was issued to the petitioner however, nowhere in the penalty order also, it has been recorded that a copy of the enquiry report was furnished to the petitioner. The petitioner has specifically taken this plea in his appeal memorandum however, this has not been addressed to by the appellate authority.

9. The petitioner has relied on orders passed by the department in which for the proved charge of firing, lesser punishment, has been awarded. In view of the aforesaid facts and circumstances, I am of the opinion that the impugned orders dated 31.01.2003 and 01.06.2005 are liable to be quashed and are hereby quashed. The matter is remanded back to the respondent No. 4 that is, the disciplinary authority, for a fresh consideration of the matter in so far as, the quantum of punishment is concerned. The writ petition is allowed in the aforesaid terms.