

(2012) 03 JH CK 0116
In the Jharkhand High Court
Case No : L.P.A. No. 355 of 2011

Arvind Kumar Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 2 JLJR 184

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the parties. The petitioner is aggrieved against order dated 15.9.2011 passed in W.P.(S) No. 6127 of 2009, by which the writ petition of the writ petitioner, challenging the order passed by the disciplinary authority and appellate authority, has been dismissed.

2. Learned Counsel for the petitioner submitted that initially enquiry was conducted but the copy of the enquiry report was not given to the writ petitioner nor it was produced by the respondents, either before the learned Single Judge or before this Court. However, when disciplinary authority ordered further enquiry, it was conducted and it's copy was given to the writ petitioner. It is also submitted that the departmental enquiry was initiated on the basis of written complaint submitted by one of the persons who himself, in enquiry, denied the filing of the complaint and also stated in affidavit that he did not lodge any complaint to the authority concerned. It is submitted that other witnesses including the complainant were not present on spot and their statement can be treated as hearsay evidence. It is also submitted that by order dated 5.09.2009, further enquiry was directed to be conducted and the witnesses who were already examined, who are P.W. 1., P.W. 2 and P.W. 3, did not turn up and then new witnesses which were not listed witnesses were summoned and their statement were recorded as C.W. 1, C.W. 2 and C.W. 3. Even statement of those witnesses could not prove the guilt of the petitioner. It is also submitted that the

petitioner has never been involved in such kind of act, either before the order or at the time when the occurrence alleged to take place. Learned Counsel for the appellant relied upon two judgments delivered in the case of Bhuwalka Steel Indus. Ltd. Vs. Bombay Iron and Steel Labour Bd. and Another, and in the case of Mohd. Yunus Khan Vs. State of U.P. and Others, wherein it has been held that enquiry should be fair and the conclusion must be based on evidence and even in a case where the delinquent person/officer is of an armed forces then also he requires to be given a fair treatment.

3. We considered the submission of Learned Counsel for the appellant and perused the orders passed by the two authorities and the reasons given by the learned Single Judge. We are of the considered opinion that the disciplinary authority and the appellate authority have considered the evidence of the witnesses in detail including the statement of P.W 1, P.W 2 and P.W 3. P.W. 1 is the complainant and he stated in his statement that complaint bears his signature. However he submitted that he did not wrote the complaint and he was under intoxication position and in that situation his signature was taken by his friends who surrounded the spot. This witness has also submitted in affidavit in support of writ petitioner. Such witness who has deep interest in the writ petitioner, if subsequent to admitting the signature on the document denied his submitting the complaint then it was the duty of the enquiry officer to find out truth from the statement of witness from totality of his evidence and the enquiry officer could have discarded the evidence, which is unreliable. We are of the considered opinion that, that part of the statement which tried to deny the submitting the complaint to authorities in writing was right rejected by the authorities in view of deep interest shown by the witness in the writ petitioner. The appellant was charged with the offence of attempting to commit theft and goods were recovered outside the workshop and the appellant-petitioner was holding the post of constable in Central Industrial Security Force. The order passed by the enquiry officer and the appellate authority, which are in detail, has been passed after considering the evidence and full opportunity was given to the writ petitioner to prove his case. Therefore, in the facts of the case, the ration judgment relied upon by the Learned Counsel for the appellant has been fully complied with.

4. So far as the quantum of punishment is concerned, that issue has already been dealt with by learned Single Judge and we need not to add any new thing and we agree with the view expressed by the learned Single Judge. There is no merit in this appeal, which is accordingly, dismissed.