

(2014) 11 JH CK 0072
In the Jharkhand High Court
Case No : W.P.(S) No. 3769 of 2010

Bhim Oraon

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Citation : (2015) 1 JLJR 648

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Neelanjan Chatterjee, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—Petitioner being aggrieved with the orders dated 9.8.2007 and 22.11.2007 by which the petitioner has been terminated from service, has approached this Court. The brief facts of the case, as has been pointed out by the learned counsel for the petitioner, is that the petitioner had been appointed as constable in District Force on 15.7.1988 and started serving his duty, he was also promoted in the year 2001. While the petitioner was posted at District Force, Ranchi, a memorandum of charge had been served upon him due to his unauthorized absent from 29.3.2005 to 28.10.2006, on that ground, petitioner had been put under suspension on 20th December, 2005. The disciplinary authority after accepting the findings given by the enquiry officer passed the order of removal from service against which the petitioner had preferred appeal before the Deputy Inspector General of Police, South Chotanagpur Range, Ranchi who has affirmed the order passed by the disciplinary authority. It has further been submitted by the counsel for the petitioner that the entire proceeding has been concluded ex-parte, the petitioner has not been provided any opportunity to defend his case, in his absence, since the proceeding has been concluded, the petitioner could not be able to put his defence regarding mental illness and as such it has been argued on behalf of the petitioner that there is violation of principles of natural justice. It has further been submitted that in the memorandum of appeal, although he has raised all

the facts by giving a medical certificate, but the appellate authority without applying its mind upon the findings given by the disciplinary authority has passed the order of removal of petitioner from service.

2. It has further been submitted that petitioner has been appointed on 15.7.1988, he has rendered about 19 years of his regular service, there is no allegation of any habitual absentees against him, hence the punishment of dismissal from service is too harsh and as such it needs reconsideration by the competent authority.

3. On the other hand learned counsel for the respondent-State has submitted that the period of absence is about 575 days, petitioner being the member of Disciplined Force has remained absent from the office without giving any information to the controlling authority, which is the gross misconduct, it has further been submitted that the petitioner ought to have brought to notice of the controlling authority with respect to his illness but he has taken casually and did not inform and remained absent for the period of 575 days. The disciplinary authority has tried his level best to serve notice upon the petitioner, but since petitioner was absent without any information, hence the Department cannot wait indefinitely for his appearance, and as such the disciplinary authority had no option except to pass the order of dismissal, it has further been submitted by the counsel for the respondent-State that the plea taken by the petitioner has not been considered by the appellate authority is totally false, since appeal is continuation to the original proceeding, the plea taken by the petitioner regarding mental illness has been considered by the appellate authority. Hence it cannot be said that the petitioner has not been provided opportunity to defend himself properly.

4. Heard the parties.

5. The petitioner admittedly is a member of Disciplined Force and as such it is expected from the member of the Disciplined Force to inform the authorities concerned if he is absent due to illness or any other condition and if the petitioner is not in a position to inform the competent authority then the efforts should have been taken by the petitioner being the member of Disciplined Force to apprise the authorities concerned with respect to his unavoidable circumstances which led him not to appear in the office, when the matter was not reported to the office, after being long period of absence, memorandum of charge had been issued, thereafter the disciplinary authority has proceeded on the basis of the findings given by the enquiry officer.

6. The plea taken by the counsel for the petitioner that the ex parte finding has been given by the enquiry officer cannot be accepted due to the reason that the enquiry officer cannot wait indefinitely for appearance of an employee to report before him, the enquiry officer having no option proceeded for the enquiry and found the charge proved against the petitioner of his unauthorized absence from office, the disciplinary authority has accepted the findings of enquiry officer and

passed the order of dismissal of petitioner from service.

7. The appellate authority after perusing the memorandum of charge has affirmed the order passed by the disciplinary authority.

8. The petitioner being the member of disciplined force is supposed to report to the office for his unauthorized absence. The disciplinary authority as well as appellate authority after going through the findings given by the enquiry officer as also after going through the plea taken by the petitioner in the memorandum of appeal has reached to concrete finding of unauthorized absence from the duty for 575 days. Since there is a concurrent finding of two authorities hence the same cannot be interfered with and ouster of petitioner from service is just and proper.

9. So far as, quantum of punishment is concerned, it has been held by the Apex Court in *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others*, , it has been held as follows:--

"One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

10. Hence, applying the said principle and considering only instance of absent, and since the petitioner has worked 19 years of regular service and also keeping in fact that prior to this incident there is no allegation against him of habitually absence, in view of this fact the order of punishment needs reconsideration regarding of quantum of punishment. Hence, decision in this regard may be taken by the authorities concerned in accordance with law, preferably within the period of four weeks from the date of receipt of this order. Accordingly, the writ petition is disposed of.