
(2015) 01 JH CK 0112
In the Jharkhand High Court
Case No : Writ Petition (S) No. 661 of 2006

Bhim Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 307

Citation : (2015) 01 JH CK 0112

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : V.P. Singh, Senior Advocate, A.K. Sahani, Rashmi Kumari and Amrita Kumari, for the Appellant

Final Decision : Disposed off

Judgement

Sujit Narayan Prasad, J.—The petitioner has approached this Court for quashing the orders as contained in letter No. 1967 dated 12.8.2003, 27.11.2001 and 22.5.2001.

2. The submission has been made on behalf of the learned senior counsel for the petitioner that the petitioner was appointed as Police Constable at District Police Force on 18.1.1984. The petitioner was given all benefits which he was entitled to get under the service rule. The petitioner after being transferred on 14.11.1995 had joined as Constable in the District Headquarters of Garhwa.

3. On 30.12.1995, the first information report was lodged on the basis of written report of Office-in-Charge, Garhwa Police Station against the petitioner on the allegation that on 30.12.1995 at Bazar Samity Garhwa in course of election of Office bearers of Bihar Police Men's Association, a sound of firing was heard from the northern Barrack of the Office due to which Election Officer started dispersing and upon interrogation it could be known that the petitioner had fired from his licencee rifle with a view to disturb the election process. Accordingly, FIR was registered under Section 307 of the Indian Penal Code and also under Section 27

of the Arms Act.

4. The petitioner was thereafter served with a charge sheet on the basis of allegation that the petitioner fired from his licensee rifle and disturbed the peace and tranquility on 30.12.1995 and on the basis of such charge sheet, a departmental proceeding No. 44/96 was initiated against the petitioner.

5. The petitioner was directed to reply before the Inquiry Officer and the petitioner had rebutted the entire charge but the Inquiry Officer proved the charge against him. The disciplinary authority has accepted the finding by the Inquiry Officer and imposed the punishment as contained in Memo No. 1353 dated 22.5.2001.

6. The petitioner being aggrieved with the order of punishment, preferred an appeal and the order of punishment dated 22.05.2001 was confirmed by the respondent No. 4 as contained in memo No. 1311 dated 27.11.2001.

7. The petitioner had challenged the appellate order as well as the order of punishment by preferring writ application which was registered as W.P.(S) No. 4/2002.

8. This Court vide order dated 28.3.2003 was pleased to grant a liberty to the petitioner to prefer a memorial before the respondent No. 2 i.e. Director General-cum-Inspector General of Police, Jharkhand to decide by taking into consideration the representation of the petitioner on merit. It was further observed that if the enquiry report was not based on evidence or any witness was examined behind the back of the petitioner, it would be open to the respondent No. 2 to recall the dismissal order and direct further enquiry and if it appears that no infirmity is there in the departmental inquiry or inquiry report, the respondent No. 2 may affirm the dismissal order.

9. The petitioner thereafter preferred memorial against the order of punishment on 9.4.2003 before the respondent No. 2. The petitioner was communicated with order as contained in memo No. 1464 dated 20.12.2004 by which he was informed that his memorial was dismissed as far back as on 12.8.2003.

10. it has further been submitted that in the criminal case the competent court had acquitted the petitioner from the charges vide judgment dated 29.6.2005 passed in S.T. No. 63/03.

11. In W.P.(S) No. 4 of 2002 the Hon"ble High Court had specifically directed the Director General-cum-Inspector General of Police to take into consideration the representation as may be preferred by petitioner and decide the memorial on merit. But from perusal of the order as contained in Annexure 5, submission has been made that actually the matter was decided by the Deputy Inspector General of Police, (Headquarter), Jharkhand. The point, which has been raised by the petitioner, has never been dealt with by the Director General-cum-Inspector General of Police. Thus, the submission has been made that under the provision of Rule 853 of the Jharkhand Police Manual, the Inspector General is authorized

to hear the memorial, who was supposed to take decision by proper application of mind and he cannot simply put his signature on the decision taken by other concerned authority. The further contention of the learned Senior Counsel for the petitioner, in this regard, is that this Hon"ble High Court had directed the Inspector General to consider the representation but the same has not been done.

12. At last, the submission of learned Senior counsel for the petitioner that the petitioner has been acquitted from the criminal case, so the order of dismissal also needs reconsideration on this ground.

13. On the other hand, learned counsel for the respondent has submitted that the nature of allegations leveled against the petitioner is very serious. The petitioner has been provided all opportunity of being heard and after perusing the statement of the witnesses, the inquiry officer had found the charge to be proved, which has been accepted by the disciplinary authority and accordingly the order of punishment has been passed.

14. Learned counsel for the respondent has further-submitted that the order of memorial has been passed by the Director General-cum-Inspector General of Police, Jharkhand. However, he has not disputed the fact that the order has been passed by the Director General-cum-Inspector General of Police, but the signature of Deputy Inspector General of Police (Headquarter) has been put on the same. The mind has not been applied by Deputy Inspector General of Police (Headquarter), Jharkhand rather the mind has been applied by the Director General-cum-Inspector General of Police.

15. Heard the parties.

16. On perusal of the order passed in W.P. (S) No. 4 of 2002, which has been preferred by the petitioner and the same has been disposed of on 28.3.2003 which reads as under:-

"Having regard to the facts and circumstances, there being a statutory provision to prefer memorial before the Director General-cum-Inspector General of Police. The petitioner is given liberty to prefer memorial before the Director General-cum-Inspector General of Police, Jharkhand, Ranchi to decide the claim. It will be open to petitioner to point out the defects, if any, in the enquiry report. The Director General-cum-Inspector General of Police, Jharkhand will take into consideration the representation as may be preferred by petitioner and decide the memorial on merit preferably within two months from the date of receipt of memorial.

If it is found that the enquiry report is not based on evidence or any of the witness was examined behind the back of petitioner, it will be open to Director General-cum-Inspector General of Police, Jharkhand to recall the dismissal order and to direct further enquiry. On the other hand, if there appears to be no infirmity in the Departmental Enquiry or in the Enquiry report the Director

General may affirm the dismissal order."

17. From perusal of the aforesaid order, it is evident that the Director General-cum-Inspector General of Police, Jharkhand was directed to take into consideration the representation as may be preferred by the petitioner.

18. The learned Single Judge while remitting the matter before the Director General-cum-Inspector General of Police, Jharkhand directed the Director General-cum-Inspector General of Police, Jharkhand to decide the memorial. It means that the authority who has been empowered to decide anything is supposed to have applied its mind and he cannot delegate such power and rely upon the decision taken by the subordinate authority. The power of appeal, review or memorial is statutory provision which has been conferred to an authority who is supposed to take decision after proper verification of the record and going through the entire records.

19. The learned Single Judge in W.P.(S) No. 4 of 2002 after taking into consideration this aspect of the matter had directed the Director General of Police to consider the memorial. But from perusal of the order as contained in Annexure 5 the same has been issued on the order of Director General-cum-Inspector General of Police, Jharkhand but issued under the signature of Deputy Inspector General of Police (Headquarter).

20. In that view of the matter, the order dated 12.8.2003 passed in pursuance to W.P.(S) No. 4 of 2002 is not sustainable in law or facts, hence, the same is, hereby, quashed.

21. The matter is remanded to the Director General-cum-Inspector General of Police, Jharkhand who shall decide the memorial and pass speaking order in accordance with law within eight weeks from the date of receipt of copy of this order.

22. In the result, this writ petition is disposed of.