
(2022) 03 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4956 Of 2010

Bishwanath Majee

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 32, 136, 226

Citation : (2022) 03 JH CK 0020

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : V. P. Singh, Swapan Maji, Anil Kumar Singh

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. V. P. Singh, learned Senior counsel appearing on behalf of the petitioner assisted by Mr. Swapan Maji, Advocate.

2. Heard Mr. Anil Kumar Singh, learned counsel appearing on behalf of the respondents.

3. In this writ proceedings, the petitioner has prayed for quashing Order dated 05.02.2015 passed by Respondent No. 4 in Departmental Proceeding whereby the petitioner has been removed from Police Service and also prayed for quashing order dated 25.01.2016 passed by respondent no. 3 in Departmental Appeal No. 13/14 whereby the petitioner has been compulsorily retired with effect from 05.02.2015.

Arguments of the Petitioner

4. Learned Senior counsel for the petitioner, while assailing the impugned orders submits that the same has been passed in gross violation of principles of natural justice. He submits that no opportunity was granted to the petitioner to cross-examine the witnesses.

5. Upon a query by this Court regarding a specific pleading in the writ petition in connection with violation of principles of natural justice, the learned counsel fairly submitted that no such specific plea has been taken in the writ petition, but he refers to para 15 and 16 of Annexure – 12 which is amended Memo of Appeal filed before the appellate authority, wherein a specific plea was taken that the petitioner was present at the time of evidence of the three witnesses and the typed copy of the witnesses were produced before him and he was asked to sign on them and he was also told that he will not be permitted to cross-examine any of the witnesses and he was threatened that if he would cross-examine any of the witnesses, he will be dismissed from service.

6. The learned counsel further submits that the departmental enquiry was not in accordance with law and he refers to the order passed by this Court on 20.12.2021, wherein his entire arguments were recorded and the respondents were directed to produce the records of the enquiry proceedings on the next date. He submits that the records of the enquiry proceeding has not been produced but a supplementary affidavit has been filed annexing some materials in connection with enquiry proceeding. Learned counsel for the petitioner further submits that non-production of the records of the enquiry proceeding will go to the advantage of the petitioner.

7. The learned Senior counsel also submitted that as per the case of the department, the petitioner was mentally unsound at the time and place of occurrence and as the petitioner was mentally unsound and it was for the department to ensure that he is granted proper assistance at the time of the departmental proceedings. He has also submitted that even after the incident, the petitioner was given some work and was also handed over the arms, but no untoward incident has happened.

8. However, during the course of argument, it is not in dispute that the alleged incident had happened, but the counsel for the petitioner submits that the appellate authority, who has ultimately imposed the punishment of compulsory retirement, should have imposed minor punishment upon the petitioner and therefore, the punishment imposed is disproportionate to the charges, considering the facts and circumstances of this case as the specific case of the department was that the petitioner was not of sound mind at the time and place of the alleged occurrence. Learned counsel has also submitted that the petitioner had given a specific reason for the incident that he was deprived of adequate sleep just prior to the date of incident because of the continuous duty. The learned counsel submits that under such circumstances, only a minor punishment should have been imposed upon the petitioner and some duty without arms could have been assigned to the petitioner.

Arguments of the Respondents

9. Learned counsel for the respondents, on the other hand, opposed the prayer and submitted that no case for interference is made out in the present case. He

further submits that no specific plea has been taken by the petitioner regarding any violation of principles of natural justice in the writ petition. The learned counsel also submits that the departmental proceeding has been conducted strictly in accordance with law and admittedly, the petitioner had appeared in the departmental proceeding, on the date on which the witnesses were examined. He also submits that the allegation which has been levelled at the appellate stage in para 15 and 16 of Annexure – 12 is highly disputed and devoid of merits and no such point has been taken even in the writ petition. He also submits that no such enquiry can be conducted under Article 226 of the Constitution of India as to whether the petitioner was threatened to not cross-examine the witnesses and as to whether the petitioner was forced to sign any deposition. The learned counsel submits that the scope of interference in departmental proceeding is very limited and there is very serious allegation levelled against the petitioner and in spite of that, already a lenient view has been taken by only compulsorily retiring the petitioner. He submits that the present writ petition is fit to be dismissed.

Rejoinder argument of the Petitioner

10. In response, learned counsel for the petitioner submits that the onus is on the department to prove that the departmental proceeding was conducted in accordance with law irrespective of the specific plea having been taken in the writ petition. He has also submitted that all the witnesses were examined one after another in one day, which itself violates the principles of natural justice.

Findings of this Court

11. The scope of judicial review in the matter of departmental enquiry has been summarized by the Hon'ble Supreme Court in the judgment reported in (2020) 9 SCC 471 (Pravin Kumar vs. Union of India) and the relevant paragraphs of the aforesaid judgment for the purposes of the present case is quoted herein below for ready reference: -

"I. Scope of judicial review in service matters

25. The learned counsel for the appellant spent considerable time taking us through the various evidence on record with the intention of highlighting lacunae and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by constitutional courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.

26. These principles are succinctly elucidated by a three-Judge Bench of this Court in *B.C. Chaturvedi v. Union of India* in the following extract: (SCC pp. 759-60, paras 12-13)

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal concerned is to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at SCR pp. 728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

27. These parameters have been consistently reiterated by this Court in a catena of decisions, including:

- (i) *State of T.N. v. S. Subramaniam*.
- (ii) *Lalit Popli v. Canara Bank*.
- (iii) *H.P. SEB v. Mahesh Dahiya*.

28. It is thus well settled that the constitutional courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.

29. The High Court was thus rightly concerned more about the competence of the enquiry officer and adherence to natural justice, rather than verifying the appellant's guilt through documents and statements. It clearly noted that evidence was led, cross-examination was conducted and opportunities of addressing arguments, raising objections, and filing appeal were granted. The conclusion obtained was based upon these very evidence and was detailed and well-reasoned. Furthermore, the High Court did not restrict the scope of judicial review, rather adopted a liberal approach, and delved further to come to its own independent conclusion of guilt. Similarly, we have no doubt in our minds that the appellate authority had carefully dealt with each plea raised by the appellant in his appeal and had given detailed responses to all the contentions to satisfy the appellant's mind. The disciplinary authority too was impeccable and no infirmity can be found in the report of the enquiry officer either.

30. Even in general parlance, where an appellate or reviewing court/authority comes to a different conclusion, ordinarily the decision under appeal ought not to be disturbed insofar as it remains plausible or is not found ailing with perversity. The present case is neither one where there is no evidence, nor is it one where we can arrive at a different conclusion than the disciplinary authority, especially for the reasons stated hereunder."

12. It is not in dispute that the petitioner was a police constable and at the relevant point of time, he was posted at Pokharia Picket, Tundi P.S, Dhanbad. It was alleged that the petitioner made 11 rounds fire in air at about 5 p.m. on 29.07.2013 from his A.K.-47 rifle in his room and outside his room and upon hearing such firing, the unit in-charge and other constables caught hold of him and took him to Dhanbad Police Centre and upon observation, it was recorded that he had lost his mental balance. It is further not in dispute that the petitioner was charge-sheeted and suspended from his service vide office order dated 19.12.2013 and charge was framed against the petitioner. The allotted arms were examined by the expert on 03.10.2013 and on the basis of report dated 20.10.2013, a departmental proceeding was proposed against the petitioner and the petitioner was charge-sheeted vide Memo No. 5148 dated 28.12.2013 and was directed to file his show cause. In the Memo dated 28.12.2013 itself, various exhibits and the witnesses from the side of the department were mentioned.

13. In the writ petition, the petitioner has specifically alleged that he was continuously allotted duty, due to which, he was sleepless and was also suffering from headache and it has also been mentioned that subsequently, the petitioner was put in a mental hospital at Ranchi and was found fit to join his duty on

16.08.2013 and thereafter, he had applied for medical leave vide letter dated 17.08.2013. The petitioner subsequently gave his show cause reply on 03.01.2014 and explained the aforesaid circumstances, due to which, he lost his mental balance and the petitioner prayed for revocation of suspension order and also mentioned in the show cause reply about his mental disbalance and denied the allegations against him. The witnesses were examined in the enquiry proceedings and while referring to the deposition of the witnesses during enquiry, it has been stated by the petitioner at para-

14 of the writ petition that the witnesses cannot be said to be the eye- witnesses of firing except to the extent that the arms was fired within last three months.

14. In the entire writ petition, no such plea has been taken in connection with any denial or threatening from any authorities preventing the petitioner to cross-examine any of the witnesses and consequent denial of principles of natural justice. However, the learned Senior counsel for the petitioner referred to paragraph 15 and

16 of the amended memorandum of appeal (Annexure -12) which was filed before the appellate authority and such plea clearly shows that the petitioner had admittedly put his signature on the deposition of the witnesses and the petitioner has alleged before the appellate authority that he was prevented and threatened from cross-examining the witnesses.

15. Admittedly, the petitioner never protested at the stage of enquiry in connection with the so-called forceful denial to cross-examine the witnesses who were examined on 02.03.2014 although the enquiry report was submitted vide report dated 20.05.2014. This Court further finds that although no plea was taken by the petitioner in the writ petition in connection with violation of principles of natural justice denying opportunity to cross-examine the witnesses, but such submission was made and recorded vide order dated 20.12.2021, which is quoted as under: -

"Mr. V.P.Singh, learned senior counsel for the petitioner submits that this is a fit case to intervene, inasmuch as, the petitioner was not given any opportunity to cross-examine the witnesses produced on behalf of the department as well as the enquiry officer did not provided any opportunity to the petitioner to adduce his evidence. He further submits that the admitted case of the petitioner is that due to mental disorder the alleged charge has been committed by this petitioner and for that he was even referred to the mental hospital at Ranchi and there he was treated sometime, as such interest of justice demands that the petitioner must have been given an opportunity to defend his case through his own counsel or any other co-employee. He further submits that from the counter affidavit it is not possible to show that proper enquiry proceeding has been done, as such the respondents may be directed to produce the record of enquiry proceeding.

2. Learned counsel for the respondent-State submits that he will produce the record of enquiry proceeding on the next date of hearing.

3. In view of the aforesaid submission, let this case be posted on 01.02.022 under the heading "For Final Disposal".

In such circumstances, the respondent was directed to produce the record of enquiry proceedings on the next date of hearing.

16. The respondents, instead of producing the record in original before this Court, has filed supplementary affidavit bringing on record the materials of the enquiry proceedings and it has been argued by the petitioner that enquiry proceedings having not been produced in original, the same should go to the advantage of the petitioner. This Court is of the considered view that the nature of allegation which is being levelled by the petitioner against the respondents by referring to paragraph 15 and 16 of the amended Memo of Appeal filed before the appellate authority is that the petitioner was threatened and compelled not to cross-examine any of the witnesses, and such plea cannot be substantiated from the records of the enquiry proceedings and therefore merely because records of the enquiry proceedings has not been produced in original, the same does not weigh in favour of the petitioner.

17. This Court is further of the view that aforesaid plea having been taken in the writ petition, this Court under Article 226 of the Constitution of India, will not enter into a roving enquiry by referring to such disputed questions as to whether the petitioner was at all threatened or prevented from cross-examining any of the witnesses or prevented from adducing his evidence in absence of any such plea raised in the writ petition under the facts and circumstances of this case.

18. Further argument of the petitioner that three witnesses were examined on the same day, is itself violative of principles of natural justice, is also devoid of any merit as there is no such legal bar under law from examining more than one witness on the same day in the departmental proceedings.

19. In view of the aforesaid findings, the argument of the petitioner, that the departmental proceedings have been conducted in violation of principles of natural justice, is devoid of any merit and hence rejected.

20. This Court further finds that after the submission of the enquiry report, the petitioner was issued second show cause notice vide Memo No. 6876 dated 31.10.2014, to which the petitioner responded. Upon perusal of the aforesaid reply to the second show cause, this Court finds that no such grievance has been raised by the petitioner in connection with any denial or threatening to the petitioner extended during the departmental proceedings to prevent the petitioner from cross-examining any of the witnesses or adducing defence evidence. After considering the show cause reply filed by the petitioner, the disciplinary authority passed the order of punishment of removal from the services w.e.f. 05.02.2015 vide order dated 05.02.2015. This Court further finds that the Memorandum of Appeal, which was filed by the petitioner against the order of disciplinary authority, has been annexed along with the supplementary counter affidavit and upon perusal of the same also, it appears that no such

ground has been taken by the petitioner regarding denial or threatening in connection with cross-examination of any of the witnesses or adducing any defence evidence. However, from perusal of Annexure-12 of the writ petition, it appears that the same is by way of amendment to the grounds to Memorandum of Appeal (Annexure – 12), in which, vide paragraph 15 and 16, the petitioner raised the aforesaid grievance for the first-time. Paragraph 15 and 16 of Annexure – 12, which have been referred to by the learned counsel for the petitioner, is a part of the amended Memorandum of Appeal. This Court finds that the appellate authority also considered the appeal and dismissed the same vide order dated 25.01.2016 and directed for compulsory retirement of the petitioner w.e.f. 05.02.2015 instead of his removal from service and modified the punishment to the benefit of the petitioner although the charges proved against the petitioner are quite serious.

21. This Court is not satisfied with any of the grounds which has been argued by the learned Senior counsel appearing for petitioner to challenge the departmental proceedings. This Court also finds that the procedure for departmental proceedings till passing the order of punishment has been duly followed by the respondents as per law and this Court is not satisfied with the plea of violation of principle of natural justice as argued by the petitioner. The appellate order also does not reflect any illegality or perversity. This Court further finds that the appellate authority has already taken a sympathetic view by converting the punishment of the petitioner from removal to compulsorily retirement. Considering the limited scope of judicial review in departmental proceedings in the light of the judgement of Hon'ble Supreme Court in Pravin Kumar vs. Union of India (supra), no case is made out for interference in this case under Article 226 of the Constitution of India.

22. Consequently, the present writ petition is hereby dismissed.

23. Interim order, if any, stands vacated.

24. Pending interlocutory application, if any, is dismissed as not pressed.