

(2016) 07 JH CK 0115

In the Jharkhand High Court

Case No : L.P.A. No. 21 of 2016 with I.A. No.1024 of 2016

Central Government of India

APPELLANT

Vs

Sudhir Kumar Singh

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Citation : (2017) 2 AIRJharR 107 : (2016) 4 JBCJ 199 : (2016) 4 JCR 503 :
(2016) 4 JLJR 270

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Vijay Kumar Sinha, Advocate, for the Appellants; Mr. Delip Jerath and Mr. Santosh Kumar Tiwary, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—I.A. No.1024 of 2016

For the reasons mentioned in the application and there being no objection from Mr. Delip Jerath, learned counsel appearing on behalf of the respondent, delay of 70 days in filing the appeal stands condoned.

I.A. No.1024 of 2016 stands allowed.

L.P.A. No. 21 of 2016

The appellant-Central Government of India is aggrieved by the order dated 31.10.2015 passed in W.P.(S) No.2947 of 2012.

2. The brief facts of the case are summarised thus :-

The respondent -writ petitioner was appointed as a Constable in Railway Protection Force in the year 1999. One Pradip Mandal lodged a report with the G.R.P., Ranchi alleging that one Constable of Railway. Protection Force, Ranchi, was demanding money from him. On 04.06.2009 a news item was published in Daily Newspaper "Prabhat Khabar", that on 03.06.2009 one Constable was

demanding bribe of Rs.10/- from the vegetable vendor. A departmental enquiry was initiated against the respondent, in which three witnesses were examined. The enquiry officer submitted the enquiry report holding the charges proved and the Senior Divisional Security Commissioner, Railway Protection Force, South Eastern Railway, passed the order of removal from service on 29.04.2010. The appeal preferred by the respondent was allowed and a direction was issued for a fresh enquiry. Second time also the respondent was awarded a major penalty of reduction of pay in the time scale of pay by five stages lower for a period of two years with cumulative effect by the Senior Divisional Commissioner. The respondent challenged the said order before the appellate authority which issued show cause notice for enhancement of punishment to removal from service with immediate effect and finally vide order dated 21.10.2011 the appellate authority passed an order of removal from service with immediate effect, which was communicated through D.O. dated 03/04.11.2011. Further appeal preferred before the Director General/RPF was dismissed on 11.04.2012.

3. Heard.

4. Learned counsel for the appellant contended that the Writ Court has no power to interfere with the order of punishment. The respondent was afforded sufficient opportunity to defend himself and on the basis of the findings recorded by the enquiry officer, the departmental authorities have passed the penalty order, which cannot be interfered by the Writ Court unless, it is found that the case set up against the respondent was based on "no evidence". .

5. Learned counsel for the respondent, while supporting the impugned order dated 31.10.2015, contended that the findings recorded by the enquiry officer is not sacrosanct and if it can be shown that the enquiry officer had drawn conclusion on the basis of materials which are legally not admissible, the Writ Court must interfere.

6. Having heard learned counsel for the parties and after perusing the documents on record, we find no ground to interfere with the order passed by the Writ Court. The appellate order dated 21.10.2011, whereby the penalty awarded by the disciplinary authority has been enhanced to one of removal from service is flawed on several counts.

7. Admittedly, the proceeding against the respondent was initiated on the basis of a newspaper report. The charge against the respondent is of demanding bribe of Rs.10/- from a vegetable vendor however, none of the witnesses produced on behalf of the department deposed anything against the respondent. Moreover, the complainant was not examined by the department. In "Commissioner of Police Delhi and Others v. Jai Bhagwan", reported in (2011) 6 SCC 376, a police constable was charge-sheeted for gross misconduct for demanding illegal gratification of Rs.100 from complainant. The evidence led during the departmental enquiry was lacking on the point of demanding money, moreover, the complainant was also not examined. The Hon'ble Supreme Court has found

that in absence of a clear proof supporting the case against the delinquent, it was difficult to record a finding of guilt. In paragraph no.16 & 17, the Hon"ble Supreme Court has observed as under :-

"16. It also seems quite impracticable to presume that in the presence of so many passengers, the respondent could have extorted money. The allegation of receiving Rs. 100 as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning back of Rs. 100 by the respondent to the complainant. There are many other shortcomings in the entire investigation and the enquiry like the statement of Mrs Ranjana Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by her. The statement of S.P. Narang was also not recorded by the Inspector nor did the Inspector seize Rs. 100 note nor noted down its number. Mr. Narang was also not examined during the course of departmental proceedings. Non-examination of the complainant and P.S. Narang during the departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Rules, 1980.

17. In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence."

8. It is contended by the learned counsel for the respondent that in criminal case instituted under Section 384 I.P.C. the respondent has been acquitted vide order dated 02.06.2010, and in such view of the matter the learned Writ Court has rightly held that the punishment of removal from service appears to be shockingly disproportionate to the proved charges.

9. Leaving aside the acquittal of the respondent in the criminal case, we cannot lose sight of the fact that the departmental enquiry was initiated against the respondent for demanding bribe of Rs.10/- and in absence of the complainant examined by the department it must be held that the respondent was not identified as a person who demanded the bribe. There is no other eye-witness to the incident. The finding recorded by the appellate authority that in view of the newspaper report the complainant was not required to be examined, is patently erroneous. Since the appellate authority enhanced the punishment awarded by the disciplinary authority i.e. . punishment of reduction of pay in time scale of pay by five stages lower for a period of two years with cumulative effect to one of removal from service, on erroneous grounds, we are of the opinion that the order passed by the appellate authority has rightly been quashed by the Writ Court.

10. Considering the nature of evidence led during the departmental enquiry, the impugned order dated 31.10.2015 remitting the matter for reconsideration on the question of penalty, in the facts of the present case does not warrant

interference by this Court.

11. The instant appeal, being devoid of merits, is dismissed.