
(2010) 07 JH CK 0020
In the Jharkhand High Court

Dayanand Paswan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 JH CK 0020

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the State.

2. Learned Counsel appearing for the petitioner submits that the petitioner was put on a departmental proceeding due to dereliction of duty on account of which one rifle belonging to another Constable got missing. The enquiry officer after taking into consideration the evidences produced in course of the proceeding did not find the petitioner to be guilty of the charge levelled against him. Accordingly, he exonerated the petitioner from the charges but the disciplinary authority differing with the finding recorded by the enquiry officer, passed the order of punishment on 16.4.2008 whereby two increments with cumulative effect have been withheld. Thereafter the petitioner, unsuccessfully preferred an appeal which was rejected on 16.10.2008 and therefore those orders have been challenged to be bad.

3. Learned Counsel appearing for the petitioner submits that when the enquiry officer submitted its report exonerating the petitioner from the charge, the disciplinary authority WEIS required to record its finding reason for differing from the finding given by the enquiry officer and then furnish it to the petitioner so that the petitioner may represent his case accordingly and only thereafter the disciplinary authority was supposed to pass an order of punishment but the disciplinary authority without recording any reason for differing with the view of

the enquiry officer passed the order of punishment straightway which is against the decision of the Supreme Court laid down in a case of SBI and Ors. v. Arvind K. Shukla 2006 SCC (L & S) 1035 and on account of that, the impugned order is lit to be set aside.

4. Having gone through the record and keeping in view the ratio laid down by the Supreme Court, in the case referred to above, I do find sufficient force in the submission advanced on behalf of the petitioner.

5. Admittedly, the disciplinary authority did not assign any reason or the ground for differing with the finding given by the enquiry officer, still he passed the order of punishment which in view of the decision rendered by the Supreme Court in a case referred to above is quite illegal.

6. Accordingly, the impugned order dated 16.4.2008 as contained in Annexure 3 and also the appellate order dated 16.10.2008 as contained in Annexure 4 are hereby set aside.

7. Hence, this application is allowed.

8. However, liberty is reserved with the disciplinary authority to record his reason/ground for differing with the opinion of the enquiry officer and then furnish it to the petitioner so that the petitioner may file his representation and only on considering the representation, the disciplinary authority would pass order of punishment.