
(2014) 12 JH CK 0088
In the Jharkhand High Court
Case No : W.P.(S) No. 6092 of 2012

Dharmu Oraon

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Citation : (2015) 2 AJR 484 : (2015) 2 JLJR 19

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Birendra Kumar, Advocates for the Appellant; Anil Kumar Sinha, Advocates for the Respondent

Judgement

Sujit Narayan Prasad, J.—In W.P.(S) No. 6092 of 2012 the petitioner has challenged the order dated 10.08.2010 passed by the Disciplinary Authority whereby the petitioner has been dismissed from service. The petitioner has also challenged the order dated 26.11.2010 passed by the appellate authority, affirming the petitioner dismissal from service and order dated 10.01.2012 passed in appeal memorial.

2. It has been submitted by the learned counsel for the petitioner that the petitioner had joined his service as constable and while he was on duty he received information that his father is seriously ill. He gave an application before the appellate authority for sanction of leave but the same was not entertained and was rejected.

The petitioner had no option and he proceeded to see his ailing father to his native place. The father of the petitioner ultimately died and as such he being the son remained at native place for the last rites of his father and after completing the same, the petitioner reported the duty on 01.05.2010.

3. The petitioner was served with memorandum of charge on the ground of unauthorized absence for the period from 18.04.2010 to 01.05.2010 i.e. the

period of 12 days without seeking any permission from the competent authority. It has been submitted that although in the memorandum of charge the reference of other incidents of absence has also been made.

4. The petitioner after receiving the memorandum of charge submitted detailed reply before the conducting officer mentioning therein that the reason was beyond the control of the petitioner. After knowing that his father is seriously ill he however tried his best to satisfy the authority concerned for seeking leave on the ground of ailment of his father but the authority without considering the ground rejected his leave application.

The information was received by the petitioner that his father was in death bed. The petitioner had no option except to proceed to the native place where his father had died. After his death he remained at native place being the son to perform last rites of his father. Immediately after conclusion of the last rites petitioner reported to office on 01.05.2010 i.e. immediately after 12 days.

5. The petitioner was departmentally proceeded for absence.

6. The conducting officer considering the ground stated by the petitioner came to the conclusion and found the charges proved.

7. Petitioner had tried to satisfy the disciplinary authority by way of reply of second show cause notice. Further it has been submitted by the learned counsel for the petitioner that the copy of the inquiry report was not provided to the petitioner. The disciplinary authority did not consider the reply of second show cause and without giving any specific findings on the report of the conducting officer and without considering that his absence was not willful has passed order of major punishment by dismissing the petitioner from service on the charge of unauthorized absence for twelve days.

8. The petitioner had also made an appeal before the appellate authority but his defence reply was not considered and the findings of the disciplinary authority was affirmed.

9. The appeal memorial filed by the petitioner was rejected in arbitrary manner on the ground that prescribed documents were not enclosed with the memo of appeal as per rule provided in Police manual.

10. It has been submitted on behalf of the learned counsel for the petitioner that the appellate authority is supposed to pass a reasoned order by applying his mind on the report of the inquiry officer or the order passed by the disciplinary authority. The appellate authority has not applied his mind because he has simply written what has been written by the conducting officer and upheld the order of disciplinary authority without any application of mind.

11. Learned counsel for the petitioner raised the following submissions:

"I. The enquiry officer ought to have considered the application given by him relating to the reason of absence of 12 days from his office.

II. The petitioner has brought on notice to the enquiry officer with respect to fact that due to compelling circumstances the petitioner was absent and went to native place to see his ailing father who ultimately died.

III. When the petitioner was in native place and his father died, it cannot be expected from the son to come from there leaving the dead body of his father to resume his duty. Ultimately being a son he was to perform last rites of his father. He had no option than to remain in the native place for the last rites of his father. The petitioner joined his duty after 12 days.

IV. Petitioner brought on notice the reason of his absence to the knowledge of the conducting officer but conducting officer did not gave any opinion in the matter of unauthorized absence of the petitioner."

12. Learned counsel for the petitioner further submitted that so far as the allegation levelled against the petitioner in memo of charge that on earlier occasion, petitioner was imposed with minor punishment for unauthorized leave is concerned the same cannot be a basis for proving his willful unauthorized absent, otherwise it will lead to violation of Article 20(2) of the Constitution of India which deals with "double jeopardy".

13. On the other hand the learned counsel for the respondents submitted that after finding the unauthorized absence of 12 days of the petitioner, memorandum of charge was issued against him and after providing opportunity to the petitioner, found the misconduct committed on the part of the petitioner and accordingly passed the order of dismissal.

14. Heard the parties and perused the documents on record.

15. Admittedly petitioner had applied leave application for the period from 18.04.2010 to 30.04.2010 stating reason to see his ailing father but his leave application was cancelled. Petitioner seeing the condition of his father, on information from his residence proceeded to his native place to see his ailing father and while the petitioner was there his father died.

16. After perusal of the enquiry report in the opinion part, the enquiry officer has discussed the defence plea with respect to the petitioner and also discussed the rejection of the leave application but he had not given any finding with respect to the fact that whether the absence of 12 days was willful or not.

However, with respect to the other punishment which was referred in the memorandum of charge Inquiry Officer has come to the conclusion that he has acted in very indisciplined manner.

17. The petitioner has also brought the reason of his absence to the knowledge of the disciplinary authority by reply of second show cause notice about illness of his father but the disciplinary authority has also not considered the same and the petitioner was dismissed from his service.

18. The appellate authority has upheld the order of punishment vide order dated

26.11.2010. On perusal of order, I find that the appellate authority has not considered the entire aspect of the matter which has been submitted by the petitioner before the enquiry officer and the disciplinary authority rather he has written verbatim the same thing which was written by conducting officer and the disciplinary authority and not applied its independent mind while passing the order.

19. The appeal memorial filed by the petitioner has been rejected on technical ground by the authority in arbitrary manner by assigning the reason that prescribed documents have not been enclosed along with the memo of appeal as per Rule 852(Kha) of the Police Manual. This order dated 10.01.2012 has also prejudiced the petitioner.

20. The enquiry officer who was conducting enquiry, was performing the quasi judicial exercise. In the findings, enquiry officer has taken note of the fact that the petitioner was in native place because of ailment of his father who ultimately died. Hence, conducting officer ought to have given finding that petitioner's absent from duty was willful or not. But enquiry officer without any evidence came to the conclusion, the charges proved against the petitioner.

21. Further, the appellate authority has also not applied independent mind. The order of appellate authority in exercising of power of the statutory appeal is not satisfactory. Whatever has been written by the disciplinary authority or conducting officer has been agreed by the appellate authority without assigning any reason as to the defence of the petitioner.

22. The appellate authority being a statutory authority under the statute is supposed to come with definite finding and to assign reason while deciding the appeal and the appeal cannot be decided without passing a reasoned order by the appellate authority. In this regard judicial pronouncement of Hon"ble Apex Court in the case of Chairman, LIC of India and Others Vs. A. Masilamani, relevant wherein it has been held that:

"19. The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order."

23. Since, there is no reason in the order passed by the appellate authority, in the aforesaid facts and circumstances, I find that the order of dismissal dated 10.08.2010 in the light of memorandum of charge on 24.4.2010 is not satisfactory and as such the matter requires reconsideration from the stage of appellate authority and to take fresh decision within reasonable period preferably

within a period of six months from the date of receipt of copy of this order.

24. The writ petition is disposed of in the terms indicated above.