

(2011) 02 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5799 of 2005

Girish Deo Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Citation : (2011) 2 JCR 334

Hon'ble Judges : R.R. 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 while the Petitioner was posted as Steno, A.S.I in the office of Commandant, Jharkhand Armed Police Force, Bokaro, he was put on a departmental proceeding on a charge of securing agent licence of L.I.C in the name of his wife by misusing the power of his post. One officer in the rank of Dy. Superintendent of Police, Jharkhand Armed Police Force -5, Deoghar was appointed as enquiry officer, who after holding enquiry did not find the charge to be proved and hence, he exonerated the Petitioner from the charge but the disciplinary authority passed an order for holding a fresh enquiry by an officer in the rank of Assistant Commandant, Jharkhand Armed Police Force-4, Bokaro, who also found the Petitioner to be innocent and accordingly, he also exonerated the Petitioner from the charge. But the disciplinary authority, I.e. Commandant, Jharkhand Armed Police Force-4 Bokaro by differing with the finding given by the two enquiry officers passed an order of punishment whereby black spot was awarded to the Petitioner which order even was affirmed by the appellate authority. Those two orders passed by the Commandant, Jharkhand Armed Police Force-4 and the appellate authority have been challenged to be bad by the Petitioner before this Court in this writ application.

3. Learned Counsel appearing for the Petitioner submits that once the Petitioner was exonerated by the enquiry officer, the disciplinary authority had no jurisdiction to pass order for fresh enquiry, rather at best, he can pass order for further enquiry and not for fresh enquiry and this point has been settled by this Court in a case of Prem Chand Ram v. State of Bihar and Ors. (2002) 2 PLJR 918 Since the disciplinary authority adopted a norm contrary to the principle laid down by the Patna High Court in the case referred to above order of punishment awarded against the Petitioner is not sustainable. Hence, the order passed by the disciplinary authority and the appellate authority are fit to be set aside.

4. This point could not be controverted by leaned counsel appearing for the State.

5. Admittedly, the Petitioner had never been found to be guilty by two enquiry officers. However, the disciplinary authority by differing with the finding given by second enquiry officer passed the order of punishment but the disciplinary authority had no jurisdiction to pass order for fresh enquiry when the first enquiry officer had found the Petitioner not guilty of the charge which proposition of law has been laid down by the Patna High Court in a case of Prem Chand Ram v. State of Bihar and Ors. (supra) on the basis of decision rendered by the Supreme Court in a case of Commissioner of Police vs. Jayasurian and Anr., (1997) 6 SCC 75 and also in a case of K.R. Deb Vs. The Collector of Central Excise, Shillong, On the other ground also the impugned order is bad.

6. Admittedly, the disciplinary authority by differing with the finding given by the enquiry officer passed the order of punishment. In that event, the disciplinary authority as per the law laid down by the Hon''ble Supreme court should have communicated first the reason for differing with the finding given by the enquiry officer so that the person may submit his explanation to that and only on having explanation/show cause, the disciplinary authority should have passed the order. Admittedly, this was never done and hence, the impugned order is bad on this count also.

7. Accordingly, the order dated 8.2.2004 passed by the disciplinary authority as contained in Annexure 4 and also the order dated 17.9.2004 passed by the appellate authority as contained in Annexure 6 are hereby set aside.

8. In the result, this application is allowed.