
(2013) 04 JH CK 0143
In the Jharkhand High Court
Case No : WP (S) No. 4919 of 2005

Gopal Prasad Thakur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 392

Citation : (2013) 3 AJR 333 : (2013) 2 JLJR 563

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rajendra Krishna, Rahul Kumar and Prabhat Singh, for the Appellant; Saket Upadhyay and Vikas Kumar, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Assailing the order dated 21.4.2001 whereby penalty of dismissal from service has been imposed upon the petitioner, the appellate order dated 16.5.2003 and the order dated 7.8.2004 passed in the appeal Memorial preferred by the petitioner, the petitioner has moved this Court by filing the present Writ Petition. The petitioner was appointed in the year 1985 as Constable. A charge-memo dated 16.1.2000 was issued to the petitioner with the following allegations:--

(1) That on 5.11.1999, the petitioner came to Police Centre, Pakur from Dharampur Guard, P.S.-Littipara by saying to the Incharge Guard, Hawaldar Girdhar Paswan that he has to meet the Superintendent of Police.

(2) That the petitioner did not remain present in the Guard till 9.11.1999, in relation to which as per the report of Incharge Guard, Hawaldar Giridhar Paswan his salary was withheld which relates to District Order No. 807/99 dated 17.11.1999.

(3) That on previous occasions also, the petitioner remained absent in the Night

count at Pakur Guard, Magazine Guard Police Line, Pakur and Police Line which relates to District order No. 316/99 dated 7.5.99, District Order No. 483/99 dated 22.6.99 and District Order No. 577/99 dated 27.7.99 respectively.

(4) That he also misbehaved with higher officials in drunk state for which on the basis of report of Sergeant Major, he was dismissed which relates to District Order No. 11/2000 dated 5.1.2000.

2. The petitioner submitted his written reply. A defence has been taken that one departmental inquiry could not have been contemplated with respect to different incidents which took place on different dates. Moreover, he was already punished for charge No. (4) and therefore, it could not have been included in the charge memo. An inquiry was conducted and report dated 29.3.2001 was submitted in which mainly the charge levelled against the petitioner for unauthorised absence from 5.11.1999 to 9.11.1999 was found proved. The second show-cause notice was issued to the petitioner on 5.4.2001. The petitioner reiterated his stand and submitted his reply on 11.4.2001. The Disciplinary Authority passed an order of penalty of removal from service on 21.4.2001. The petitioner preferred an elaborate appeal before the Appellate Authority) however, the Appellate Authority dismissed the appeal of the petitioner on 16.5.2003. Thereafter, the appeal Memorial preferred by the petitioner was also dismissed on 7.8.2004.

3. For resisting the claim of the petitioner, a counter-affidavit has been filed stating that the inquiry was conducted in a fair manner and the petitioner was afforded reasonable opportunity to defend his case. The petitioner has been found negligent and absent from duty on three other occasions also. In view of the past misconduct of the petitioner, the order of penalty has been passed by the Disciplinary Authority and the Appellate Authorities have rightly rejected the appeal and appeal Memorial of the petitioner.

4. Heard learned counsel for both the parties at length and perused the documents on record.

5. Mr. Rajendra Krishna, learned counsel appearing for the petitioner has raised two contentions namely, (i) there is no evidence of willful absence from duty with respect to charge against the petitioner for unauthorised absence, and (ii) the penalty imposed upon the petitioner is excessive and grossly disproportionate to the misconduct alleged and proved against the petitioner. He has submitted that the specific defence of the petitioner has not been considered by the inquiry officer or the Disciplinary Authority while imposing the penalty of dismissal from service.

6. On the other hand, Mr. Saket Upadhyay, learned counsel appearing for the respondents has submitted that the respondents have considered the materials on record and the defence of the petitioner before imposing the order of penalty. In view of the repeated lapses on the part of the petitioner, it was thought fit to pass order of dismissal from service.

7. A perusal of the documents on record discloses that in the charge-memo four different charges have been framed against the petitioner. The charge nos. (1) and (2) related to each other. Charge No. (2) itself makes it clear that for unauthorised absence from service from 5.11.1999 to 9.11.1999, the salary of the petitioner was withheld by District Order No. 807/99 dated 17.11.1999. With respect to Charge Nos. (3) and (4), I find that the petitioner has already been punished. It appears that Charge Nos. (3) and (4) have been included in the charge-memo dated 16.1.2000 only for the purpose of looking into the past misconduct of the petitioner. In the net result, only Charge No. (1) which relates to unauthorised absence from 5.11.1999 to 9.11.1999 was left for consideration by the inquiry officer. The inquiry officer has submitted the report holding that charge No. (1) is found true against the petitioner. However, nowhere the inquiry officer has dealt with the specific defence taken by the petitioner. There is no finding recorded by the inquiry officer that the petitioner left the place of posting without any just excuse. The Disciplinary Authority has not examined this aspect of the matter properly. There is no finding recorded by any Authority that the absence from duty was willful. The appellate order dated 16.5.2003 simply records that the petitioner has not brought on record any new ground for revoking the order of penalty, which is definitely an error committed by the Authority. The petitioner has preferred a detailed appeal for reconsideration of the order of penalty. The appeal Memorial of the petitioner was also dismissed, without taking into account the specific defence of the petitioner and the documents and materials brought on record by the petitioner.

8. In *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Hon"ble Supreme Court has held that the Appellate Authority while disposing of the appeal, is required to apply his mind. It has been observed that if an appellate order is in agreement with that of the order passed by the Disciplinary Authority it may not be a speaking order but the Authority passing the same must show that there had been proper application of mind on his part.

9. In *Apparel Export Promotion Council Vs. A.K. Chopra*, , the Hon"ble Supreme Court has held that the Appellate Authority has also the power/jurisdiction to re-appreciate the evidence and come to its own conclusion on facts, being the sole fact-finding authorities. In the present case it is clear that the appellate authorities have not applied their mind and the impugned orders dated 16.5.2003 and 7.8.2004 have been passed in a mechanical manner.

10. The power of the High Court under Article 226 of the Constitution of India to interfere with the findings recorded in the departmental inquiry, has been settled by a catena of judgment by the Hon"ble Supreme Court and it has been held that if an inquiry report or order of penalty is based on "no evidence" or where the findings have been recorded by ignoring some relevant materials or after considering some irrelevant materials, such findings/order would not be immune from judicial review. It has also been held by the Hon"ble Supreme Court that if the punishment imposed is excessive or disproportionate to the misconduct

alleged and proved or where it shocks the conscience of the Court or if it is an outrageous defiance of logic, the High Court would be justified to interfere with such order of penalty.

11. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Hon''ble Supreme Court has held:--

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

12. In *B.C. Chaturvedi Vs. Union of India and others*, , the Hon''ble Supreme Court has held that the Court will not interfere with the order of punishment unless the punishment awarded is one which shocks the conscience of the Court. A similar view has been expressed by the Hon''ble Supreme Court in *Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma*, and several other cases.

13. I further find that before imposing punishment of dismissal from service for misconduct which does not include an act of moral turpitude or corruption, the Authorities are required to record a finding that the misconduct is of such grave nature that it warrants the order of dismissal from service.

14. In view of the materials on record, I am of the opinion that the penalty imposed upon the petitioner is definitely excessive and disproportionate to the misconduct alleged and proved against the petitioner. The orders impugned in the Writ Petition cannot be sustained in law.

15. In *Harjit Singh and Another Vs. The State of Punjab and Another*, , the Hon''ble Supreme Court interfered with the order of dismissal from service and imposed the punishment of compulsory retirement observing as under:--

15. In the aforementioned situation, ordinarily, we would have asked the disciplinary authority to consider the matter afresh, but the occurrence had taken place in the year 1984. The appellants and the said Parminder Singh had worked only for a few years, one of them is dead. In the aforementioned situation, we are of the opinion that we would-be justified to fix the quantum of punishment. We are of the opinion that in the facts and circumstances of this case and in particular having regard to the passage of time, punishment of compulsory retirement will meet the ends of justice. If otherwise eligible, the delinquents would be entitled to retrial benefits. The appeal is allowed to the aforementioned

extent.

16. In *Surendra Prasad Shukla Vs. The State of Jharkhand and Others*, , it was found that the delinquent, a Head Constable in State Police, who had served for 34 years, was dismissed from service as a stolen car was recovered from the Government quarters occupied by the delinquent employee. However, no charge of abetting or aiding the offence u/s 392 I.P.C., for which his son was charged, was framed against him, the Hon"ble Supreme Court held that the punishment of dismissal from service, which would deprive the employee of his pension also, was shockingly disproportionate to negligence proved against him. The Hon"ble Supreme Court partly allowed the appeal and modified the punishment of dismissal from service to compulsory retirement.

17. In *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, , a case in which the delinquent employee without verification, instructed his colleague to transfer a dormant account into operative category at the request of an unknown person visiting the bank and claiming to be account holder, which turned out to be false, the Hon"ble Supreme Court has held as under:--

11. However having regard to the fact that the proven charge did not involve either misappropriation or fraudulent conduct and the other circumstances of the case, we are of the view that the punishment of dismissal should be substituted by compulsory retirement, which does not involve reinstatement.

12. We, accordingly, allow the appeal and set aside the judgment of the High Court. We uphold the finding of guilt recorded by the disciplinary authority, but modify the punishment from "dismissal" to "compulsory retirement". There is therefore no question of grant of any back-wages.

18. In *Hussaini Vs. Hon. Chief Justice of High Court of Judicature at Allahabad and Others*, , the Hon"ble Supreme Court has converted the order of punishment of dismissal into order of compulsory retirement on compassionate ground.

19. Mr. Rahul Kumar, advocate assisting Mr. Rajendra Krishna, the learned counsel appearing on behalf of the petitioner makes a statement at bar that the date of birth of the petitioner is 14.7.1961. The petitioner who was appointed in the year 1985, was dismissed from service on 21.4.2001, and thus he has worked for about 16 years. About 28 years have passed since the petitioner was appointed as Constable and he is on the verge of retirement and therefore, no purpose would be served by remanding the matter to the Authority for considering the quantum of punishment. I am of the view that it would serve the ends of justice if the order of dismissal from service is converted into an order of compulsory retirement. Needless to say petitioner would be entitled for all retrial benefits, if permissible under the law. The impugned orders dated 21.4.2001, 16.5.2003, 7.8.2004 are quashed. The Writ Petition is allowed in the aforesaid terms.