

(2014) 12 JH CK 0033
In the Jharkhand High Court
Case No : W.P. (S) No. 1184 of 2011

Hem Bahadur Limbu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 JLJR 408

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Saurav Arun, Advocate for the Appellant

Judgement

Sujit Narayan Prasad, J.—The petitioner, being aggrieved with the order dated 24.1.2009 passed by the disciplinary authority, by which he has been dismissed from service and the order confirming the dismissal of the petitioner's service dated 3.7.2010, has approached this Court.

2. It has been submitted by learned counsel appearing on behalf of the petitioner that the petitioner has been appointed as Constable under the Jharkhand Armed Police. He proceeded on sanctioned leave from 17.6.2008 to 7.7.2008, but after lapse of sanctioned leave he did not join duty, hence he was put under suspension on 13.8.2008 in contemplation of departmental proceeding. The petitioner, thereafter, has been dismissed from service vide order dated 24.1.2009 against which he has preferred an appeal before the appellate authority, but the same has also been rejected by order dated 3.7.2010. It has been submitted on behalf of the petitioner that the petitioner has been dismissed from service without following adequate and sufficient opportunity of being heard. The department has reached to the conclusion without providing sufficient opportunity to the petitioner of being heard as the petitioner has not been permitted to cross-examine the witnesses. The relevant documents have also not been supplied to the petitioner. It has further been submitted that the disciplinary authority has accepted the finding of the Enquiry Officer and passed

the order of dismissal.

3. On the other hand, learned counsel appearing on behalf of the respondents-State has submitted that the authorities have provided all opportunities of hearing, but it is the petitioner who has not availed the same and as such there was no option but to proceed with the departmental proceeding. It has further been submitted that since the petitioner has remained absent from duty without any permission, it is a gross misconduct. Hence the petitioner being a member of disciplined Force, has rightly been dismissed from service. It has further been submitted that even the appellate authority has also considered all aspects of the matter who reached to the conclusion that the petitioner has not given information to the authorities concerned when the specific ground of the petitioner was that he was suffering from jaundice, which is not such a disease that the family member of the petitioner could not give any information to the competent authority with respect to the absence of the petitioner. As such it has been submitted that the order needs no interference.

4. Heard the parties.

5. The petitioner, being a member of disciplined Force, has been given sanctioned leave initially for a period from 17.6.2008 to 7.7.2008. After expiry of the sanctioned leave, the petitioner has not given any information to the authorities concerned. The petitioner has been put under suspension vide order dated 13.8.2008. The respondent authorities have right to secure the presence of the petitioner by adopting all methods including publication in the newspaper, so that he could be able to appear in the proceeding. Even the notice has been published in the national newspaper, but the petitioner has not bothered to appear.

6. It is the case of the petitioner that the petitioner was suffering from jaundice, hence it was the duty of the petitioner to at least give information to the authorities concerned with respect to his inability to report to the office. But from perusal of the record it appears that the petitioner has taken the matter very casually. No sincere effort has been taken in giving information to the authorities concerned, since no valid document like the registered post, etc. has been annexed in the entire pleading.

7. The authorities, after appreciating all the facts, have reached to the conclusion with respect to the commission of misconduct since the petitioner has unauthorisedly remained absent from duty. Unauthorised absence, as per the Police Manual, is a gross misconduct.

8. Since there is concurrent findings of two authorities, this Court cannot interfere and substitute its own independent findings. The Hon'ble Apex Court in B.C. Chaturvedi Vs. Union of India and others, held that the court in its power/judicial review does not act as an appellate authority and reappraise the evidence and arrive at its own independent findings on the evidence. The relevant portion of this case at paragraphs-12 and 13 are quoted herein below:--

"12. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusion are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant."

9. The same settled proposition of law has been reiterated by the Apex Court in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, wherein at para-20 it has been held that:--

"20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority."

10. Further, in the case of State of U.P. and Others Vs. Raj Kishore Yadav and Another, at para 4 as follows:

"..... It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed."

11. In view of the settled proposition of law as has been indicated herein above, in my view, since there is concurrent finding of misconduct against the petitioner, this Court sitting under Article 226 of the Constitution of India cannot reappraise the evidence.

12. In the entirety of the facts and circumstances stated herein above, I find that the impugned order needs no interference. Hence, this writ petition is hereby dismissed.