

(2013) 04 JH CK 0095
In the Jharkhand High Court
Case No : W.P. (S) No. 555 of 2003

Indra Nath Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 2 JLJR 631

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 18.12.2002, the petitioner has filed the present writ petition. The brief facts as disclosed in this writ petition are that, the petitioner was appointed on the post of Assistant Accounts Clerk on 08.08.1980. He was put under suspension on 18.07.2000 in contemplation of a departmental proceeding. On 16.11.2000, the petitioner submitted his written explanation however, an enquiry was ordered against the petitioner. The enquiry officer submitted a report on 09.05.2001 in which, no finding with respect to the mis-conduct alleged was recorded by the enquiry officer. By Resolution dated 30.07.2002, another departmental proceeding was initiated appointing one Shri Shashi Shankar Samant as enquiry officer. The petitioner moved High Court in W.P. (S) No. 5779 of 2002 for quashing of order of suspension dated 18.07.2000 and Resolution dated 30.07.2002, whereby a second departmental enquiry was sought to be initiated. The writ petition was disposed of on 10.12.2002 permitting the Department to pass a final order after considering the reply of the petitioner to the second show-cause notice and the petitioner was permitted to raise all objections in reply to second show-cause and all the points of law raised in the Writ Petition. On 20.12.2002, the petitioner submitted his written reply to the second show-cause notice raising various objections such as, violation of principles of natural justice and initiation of second departmental enquiry not sustainable in law. On 18.12.2002, the

impugned order of punishment of dismissal from service was passed.

2. A counter-affidavit has been filed on behalf of Respondents, in which, it has been specifically stated that in view of the inability of the earlier enquiry officer to continue with the departmental proceeding, as some of his seniors were also involved in the matter, another enquiry officer was appointed and a fresh departmental proceeding was initiated against the petitioner. During the first departmental proceeding also, the charge of mis-appropriation against the petitioner has been found proved. The petitioner was afforded all reasonable opportunity to defend himself and on a consideration of materials on record, the impugned order of dismissal from service dated 18.12.2002 has been passed.

3. Heard counsel for both the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that on conclusion of the first departmental proceeding, the enquiry officer did not record any specific finding with respect to the charge levelled against the petitioner. The initiation of a second departmental proceeding is barred in law and therefore, the order of dismissal passed against the petitioner is not sustainable in law.

5. On the other hand, learned counsel appearing for the Respondents has supported the impugned order on the ground that the charges against the petitioner are serious. The charge of mis-appropriation against the petitioner has been found proved and therefore, the order of dismissal passed against the petitioner is proper and appropriate.

6. Adverting to the contention raised on behalf of the petitioner that the enquiry officer, who submitted the enquiry report on 09.05.2001, has not recorded any specific finding with respect to the guilt of the petitioner, I find that it has been recorded by the enquiry officer that several documents were not produced before him and the money withdrawn on several occasions has not been satisfactorily explained by the petitioner. It has also been recorded that entry in the ledger was primarily the responsibility of the petitioner and therefore, the submission of the learned counsel appearing for the petitioner is contrary to the documents on record. In so far as the contention of the learned counsel appearing for the petitioner that the second enquiry initiated against the petitioner is not permissible in law, I find that the second enquiry officer was appointed in view of inability of the first enquiry officer to conduct the departmental proceeding against the petitioner. That was the technical defect, due to which, the second departmental enquiry was initiated against the petitioner. In such a circumstance, I am of the view that the departmental proceeding initiated against the petitioner pursuant to the Resolution dated 30.07.2002 is permissible in law.

7. I further find that a serious charge of mis-appropriation has been levelled against the petitioner, and it has been found proved. In cases involving mis-appropriation of government money, the most appropriate punishment is the dismissal from service.

8. The Hon"ble Supreme Court in U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, has held,

23. In NEKRTC v. H. Amaresh and U.P. SRTC v. Vinod Kumar this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/mis-appropriation, the only punishment is dismissal.

In view of the aforesaid discussion, the present writ petition is dismissed.