

(2019) 08 JH CK 0111

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1414 Of 2010

Indradeo Prasad Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 201, 302
Punjab National Bank Officer Employees (Discipline And Appeal) Regulations, 1977 —
Regulation 7(2)

Citation : (2019) 08 JH CK 0111

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rishikesh Giri, Monalisa Singh, Chandra Prabha, Vishal Kr. Rai

Final Decision : Allowed

Judgement

1. Heard Mr. Rishikesh Giril, learned counsel for the petitioner and Ms. Chandra Prabha, learned S.C. I for the respondents-State.

2. The petitioner has preferred this writ petition for quashing order dated 12.02.2008 whereby the punishment of withholding of increment in salary for one year and also of not making payment of the salary for the period 14.08.2006 to 11. 06.2007 has been inflicted; further prayer has been made for quashing appellate order dated 09.05.2008 whereby the appellate authority has affirmed the order passed by the disciplinary authority; and further for quashing order dated 5. 06.2009 passed in memorial appeal preferred by the petitioner.

3. The petitioner was a constable in the Special Branch of Jharkhand Police and while serving as such in the year 2006 a criminal case was lodged against the petitioner and four others under Section 302/201 of the Indian Penal Code for committing murder of his daughter-in-law and for disappearing her dead body, for which, he was taken into custody. Pursuant thereto the petitioner was put under suspension and a departmental proceeding was initiated against him, in which, a memo of charge was served upon him, to which, he replied. In the

departmental proceeding, the enquiry officer was appointed who conducted the enquiry and the petitioner also participated in the said proceeding. The enquiry officer after enquiry came with a finding that the charges levelled against the petitioner has not been proved and exonerated the petitioner from the charges levelled against him in the departmental proceeding. But, the disciplinary authority differing with the finding recorded by the enquiry officer, inflicted the impugned order of punishment dated 12.02.2008, against which the petitioner preferred appeal but that has been rejected affirming the order passed by the disciplinary authority.

4. Mr. Giri, learned counsel for the petitioner submits that in the criminal case, which is basis of initiation of departmental proceeding against the petitioner, the petitioner has already been acquitted. Learned counsel for the petitioner further submits that though the enquiry officer has exonerated the petitioner but the disciplinary authority without affording opportunity of hearing to the petitioner passed the impugned order, which is not sustainable in the eyes of law. He further submits that law is well settled in this regard that if the enquiry officer exonerates the delinquent and the disciplinary authority differs with the findings recorded by the enquiry officer, he needs to call upon the delinquent by way of show cause and to afford opportunity of hearing to the delinquent but in the instant case that procedure has not been followed, as such the impugned orders are bad in the eye of law.

5. To substantiate his argument, learned counsel for the petitioner referred to the decision rendered in the case of Punjab National Bank & Ors Vs. Kunj Behari Misra as reported in (1998) 7 SCC 84, in particular paragraph 19, which is quoted herein below:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6. Per contra, Ms. C. Prabha, learned S.C. I appearing for the State submits that there is no illegality in the impugned orders. It has further been submitted that the disciplinary authority has given sufficient reason as to why he is differing with the findings recorded by the enquiry officer, as such there is no illegality in the impugned order. She further submits that acquittal in the criminal case does

not entitle the petitioner for exoneration in the departmental proceeding. In support of her submission, she referred to the decision rendered in the case of General Manager (Operations) State Bank of India & Anr Vs. R. Periyasamy as reported in (2015) 3 SCC 101. She further submits that the yardstick in criminal proceeding and departmental proceeding is different; as in the criminal proceeding yardstick is prove beyond reasonable doubt whereas in the departmental proceeding the yardstick is of preponderance of probability. In support of her submission, she referred to the decision rendered in the case of Union Territory, Chandigarh Administration & Ors Vs. Pradeep Kumar and Anr as reported in (2018) 1 SCC 797.

7. So far as the case laws referred by learned counsel for the State is concerned, the same is distinguishable on the facts and circumstances of the case as in the instant case, the departmental proceeding started and concluded before acquittal of the petitioner in the criminal case and in the enquiry proceeding, the enquiry officer exonerated the petitioner from the charges levelled against him. Hence, case referred by counsel for the State is not applicable in the facts and circumstances of the case.

8. Having heard learned counsel for the parties, this Court finds that the enquiry officer exonerated the petitioner from charges; hence the disciplinary authority ought to have provided opportunity of hearing while differing with the view taken by the enquiry officer. Hence, in view of the law settled by Hon'ble Apex Court in the case of Kunj Behari Misra (supra) and considering the fact that the petitioner has been acquitted in the criminal case, the impugned order dated 12.02.2008 passed by the disciplinary authority and order passed by the appellate authority dated 09.05.2008 as also as also order passed in memorial appeal dated 05.06.2009 are not sustainable in the eyes of law; hence they are quashed.

9. Accordingly, the writ petition is allowed. The petitioner will be entitled to all consequential benefits.