
(2014) 11 JH CK 0001
In the Jharkhand High Court
Case No : W.P.(S) No. 2327 of 2011

Jitendra Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Citation : (2015) 2 AJR 221

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : S.N. Pathak, Sr. Advocate, Fayyaz Ahmad and Nikita, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—The petitioner, being aggrieved by the orders dated 10.8.2010 and 11.11.2010, by which he was dismissed from service, has approached this Court.

2. The brief facts, as has been argued by learned senior counsel appearing on behalf of the petitioner, is that the petitioner was posted in the district of Dhanbad and was entrusted with Lok Sabha General Election duty. On 20.4.2009 the petitioner, all of a sudden, fell ill, he was taken into hospital by one Assistant Sub-Inspector of Police. The petitioner remained there till 24.4.2009. Due to his hospitalisation during the said period, when he was searched out on 22.4.2009 at Police Line, Dhanbad, he was not found there. The same was reported by the Havildar to the higher authority. The Havildar gave written report to the Sergeant Major on which the Sergeant Major wrote that one Insas rifle, bannet, scabt along with 100 round bullets were issued in the name of the petitioner. The petitioner was round in drunken stage at Steel Gate quarreling with local people. The Officer In-Charge, Saraidhela Police Station had informed that he had hospitalised the petitioner by keeping his Insas rifle and 20 round bullets in his safe custody, but 80 round bullets were missing. Thereafter the petitioner was put under suspension on 26.4.2009. The Deputy Superintendent of Police, Dhanbad conducted a preliminary enquiry, submitted his report in which the

petitioner was found guilty. Thereafter, a memorandum of charge was issued on 20th February, 2010 alleging therein that the petitioner after being unauthorisedly absent, found quarreling with local people in drunken stage and 80 cartridges from the arms issued to the petitioner were missing, which is a gross indiscipline and is an example of being a disqualified Police Constable.

3. It has been submitted on behalf of the petitioner that after issue of memorandum of charge, the petitioner has submitted reply stating therein that he was not in drunken stage rather on 20th April, 2009 when he was performing election duty along with Insas rifle and other equipments. All of a sudden, he fell ill and fell down near Steel Gate which was seen by the Officer In-charge, Saraidhela Police Station. He by making reference in the written letter addressed to the authorities of the Patliputra Medical College and Hospital (PMCH), Dhanbad, hospitalised petitioner there. The petitioner remained there till 24.4.2009, thereafter he was released by striking off his name from the register of the PMCH. Petitioner has further submitted that from 20.4.2009 to 24.4.2009 no request was made by the disciplinary authority or any authority to examine him medically, rather the Assistant Sub-Inspector, Saraidhela Police Station has hospitalised him when the petitioner was found in unconscious stage near Steel Gate. He has also stated in the case diary that the petitioner was found in unconscious stage along with his Insas rifle loaded with cartridges. Thereafter he was sent for treatment to the P.M.C.H., Dhanbad. It has been submitted that the petitioner since was in hospital, hence there was no question of taking any liquor by him on 20th April, 2009. If the petitioner has taken any liquor, then there must be a cogent evidence which is to be issued by the medical experts. It is not a case of the respondents that after taking liquor the petitioner was hospitalised from 20.4.2009 to 24.4.2009 and, as such, he could have been examined by the doctor as to whether the petitioner was in drunken stage or not.

4. It has further been submitted that in absence of any cogent evidence with respect to taking liquor against the petitioner, the charge is baseless as because in the list of exhibits as has been referred in the memo of charges (Annexure-1) no document pertaining to medical certificate in support of the drunkenness of the petitioner has been annexed which itself reveals that the petitioner was not medically examined. It has further been submitted that since the petitioner was ill and as such on 22.4.2009 also he was in hospital. Since the petitioner was taken into hospital by the Sub-Inspector, Saraidhela Police Station hence it was the duty of the Officer In-charge to apprise the authorities that the petitioner is not in a position to report for election duty. Since he was in hospital, so it was beyond his control to give information apprising the authorities that he was not in a position to discharge his duty. The Enquiry Officer, without considering that aspect of the matter, has found the charges proved. The petitioner after issuance of second show-cause along with a copy of the enquiry report, has also apprised this fact to the disciplinary authority, but the disciplinary authority, without considering reply given by the petitioner has accepted the finding given by the Enquiry Officer. The petitioner filed a memorandum of appeal before the Deputy

Inspector General of Police who has also rejected the appeal. It has been submitted on behalf of the petitioner that the appellate authority has not considered the entire matters and affirmed the order passed by the disciplinary authority. Thus, in the background of these facts and materials, the impugned order of dismissal is not sustainable in the eyes of law. The charges have been framed against the petitioner without any cogent evidence. The main charge against the petitioner is that he was in drunken stage but no medical evidence has been brought on record by the disciplinary authority. The petitioner was hospitalised during the relevant period, but no medical examination was held to assess his physical condition on 20.4.2009, rather the Officer In-charge, Saraidhela Police Station while hospitalising the petitioner in the hospital, has made a report with respect to the condition of the petitioner stating specifically that the petitioner was found in sub-unconscious stage. He has not stated in the report that the petitioner was in drunken stage. On this ground dismissal order has been assailed submitting that these facts have not been considered by the disciplinary authority or by the appellate authority. The order of dismissal has been passed in a very casual manner and is liable to be set aside.

5. On the other hand, learned counsel appearing for the respondents has submitted that the charge has been framed against the petitioner which is very serious in nature. The petitioner has been provided adequate opportunity of being heard, the disciplinary authority, after taking into consideration all the aspects of the matter and the findings given by the Enquiry officer, has passed the order of dismissal and as such the order needs no interference.

6. Heard the parties.

7. The petitioner has challenged the order of dismissal. The charge which has been levelled against the petitioner is that on 20.4.2009 he was found in drunken stage. After going through the records, especially Annexure-A annexed to the counter affidavit which is the extract of the case diary wherein the Officer In-charge, Saraidhela Police Station who has hospitalised the petitioner in PMCH on 20.4.2009, has stated that the petitioner was found in sub- unconscious stage along with his Insas rifle. He has not whispered with respect to any drunkenness. Annexure-B annexed to the counter affidavit is the communication made by the Professor and Head of the Department, Medicine Department, PMCH addressed to the Superintendent, PMCH wherein it has been stated that the petitioner was admitted in hospital on 20.4.2009 and his name was struck off from the register of the hospital on 24.4.2009. In the said letter also he has stated that the petitioner was hospitalised in sub-unconscious stage. A copy of the letter of the Officer In-charge, Saraidhela Police Station has also been annexed.

8. From perusal of these two letters it appears that there is no evidence of drunkenness of the petitioner. However the witnesses have given oral statement, but the oral statement cannot be believed if it is not supported by the documentary evidences. The documentary evidence is otherwise different which does not support the version of the witnesses who have said that the petitioner

was found in drunken stage on 20.4.2009. In that view of the matter the charge of drunkenness which has been found to be proved by the Enquiry Officer is, in my view, is contrary to the record. The Enquiry Officer without considering all aspects of the matter, has found the petitioner in drunken stage.

9. On 20.4.2009 the petitioner has not reported to the election duty. In my view, finding has been given that the election duty is a most serious duty but the petitioner has not reported. The Inquiry Officer while proving this charge has not appreciated the fact that the petitioner fell ill and he was hospitalised in PMCH on 20.4.2009 and remained there till 24.4.2009. Hence there is no question of giving any report to the higher authorities with respect to performing election duty by him, rather it was the duty of the other officials who had carried the petitioner to the hospital, to report the higher authorities when the petitioner was being searched in the Police Line on 22.4.2009. In my view this aspect of the matter has not also been appreciated by the authority.

10. The other charge that the petitioner was quarreling with the local people on 20.4.2009, is also not fit to be believed in view of the fact that the petitioner was in hospital from 20.4.2009 to 24.4.2009 while the specific allegation against the petitioner is that on 20.4.2009 he was quarreling with the local people.

11. In that view of the matter and in totality of the facts and circumstances stated herein above, the Enquiry Officer has not conducted the enquiry properly and has given finding without due application of quasi-judicial mind. Here in the instant case the petitioner has been punished with the dismissal of service merely on the ground of presumption. The dismissal order cannot be said to be legal.

12. Thus, the disciplinary authority has not appreciated the entire aspect of the matter, as stated herein above. The Enquiry Officer, merely by believing on oral statement of the witnesses, has proved the charges and further from the charges itself it is not clear as to when the petitioner was in drunken stage, as such, the charge to that effect is also vague.

13. Here, judgment of Apex Court in Shri Anant R. Kulkarni Vs. Y.P. Education Society and Others, is worth quoting. In this case Apex Court held that delinquent should not be served with charge-sheet, without providing a clear, specific and definite description of charges. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. In the present case also, charge is vague as it is not clear as to when petitioner was in drunken stage. Para-16 and para-17 of Anant R. Kulkarni (Supra) are quoted herein below:--

"16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-

sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. (Vide State of A.P. v. S. Sree Rama Rao, Sawai Singh v. State of Rajasthan, U.P. SRTC v. Ram Chandra Yadav, Union of India v. Gyan Chand Chattar and Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank.)

17. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity."

14. In that view of the matter the impugned orders dated 10.8.2010 and 11.11.2010 are not sustainable and are hereby quashed. The petitioner is reinstated in service with all consequential benefits. However, since the petitioner has not performed the duty, back wages shall not be paid to the petitioner, but the services shall be counted for other benefits.

15. This writ petition is allowed with the aforesaid conditions.