

(2010) 04 JH CK 0009
In the Jharkhand High Court

Kameshwar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0009

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard Counsel for the parties.

2. The petitioner in this writ application, has prayed for a direction upon the respondents to release the amounts of his salary which has been withheld with effect from 6.11.2002 to 01.03.2003.

3. As explained by the Counsel for the parties, the petitioner being a constable, had proceeded on leave for eight days after obtaining permission from the competent authority. However, he overstayed the period of leave and joined much later after almost four months.

Treating the same as an act of misconduct, an explanation was called for from the petitioner. In response, the petitioner explained that after proceeding on leave with the permission granted, he fell seriously ill and could not possibly resume duty immediately after expiry of the permitted period of leave. He had also submitted the medical certificate purportedly issued by the attending doctor.

However, the Disciplinary Authority being not satisfied with the explanation offered, proceeded to inflict punishment by way of withholding of the petitioner's salary on the ground of "No Work No Pay" for the aforementioned period. The petitioner filed an appeal before the Appellate Authority and taking a specific ground that for the similar acts of purported misconduct, other co-employees who had also absented by overstaying the period of leave granted to them for more than 80-85 days, have been exonerated for the lapses and no amount has been withheld for their overstayed period of their absence. The petitioner has

also furnished the names of few of such co-employees to whom the benefits of exoneration is claimed to have been extended.

4. The petitioner claims that he has been arbitrarily discriminated and no reason has been assigned by the Disciplinary Authority as to why, he does not deserve the same treatment as meted out to other co-employees.

5. In the counter-affidavit filed on behalf of the respondents, the stand taken is that withholding of the salary for the period the petitioner did not join duty, is perfectly legal and the decision in this regard has been taken in accordance with the Rules.

6. As it appears from the rival submissions, the only ground on which the petitioner relies heavily in support of the relief claimed by him, is that he should be given the same treatment as given to other co-employees under identical and similar circumstances

7. In the counter-affidavit, there appears no averment regarding the aforesaid stand taken by the petitioner. This stand appears to have been taken by him in his Memorandum of Appeal filed before the Appellate Authority, but even in the impugned order of the Appellate Authority, it appears that this aspect of the petitioner's ground has not been adverted to at all.

8. Considering the above facts and circumstances, the impugned order of the Appellate Authority is hereby quashed. The matter is remitted back to the Disciplinary Authority of the petitioner who, within two months from the date of receipt/production of a copy of this order, shall verify the statement of facts made by the petitioner with reference to the names furnished by him of such other constables who, according to the petitioner, were exonerated despite their absence without leave and if, upon such verification the petitioner's contentions are found correct and true, the Disciplinary Authority shall pass an appropriate order in respect of the relief claimed by the petitioner for release of the salary withheld.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondents.