
(2015) 09 JH CK 0115

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4858 of 2010

Kamkhya Narayan Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 09 JH CK 0115

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Mahesh Tewari and Rahul Dev, for the Appellant; Rakhi Rani, J.C. to S.C., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Pramath Patnaik, J—In the aforesaid writ application, the petitioner has inter-alia prayed for issuance of a writ of certiorari for quashing the dismissal order dated 04.03.2010 passed by Superintendent of Police, Dhanbad, vide Annexure-4 to the writ application and also the order dated 05.07.2010 passed by the Appellate Authority i.e. Deputy Inspector General of Police, Coal Range, Bokaro vide Annexure-5 to the writ application, modifying the order of punishment of dismissal from services to compulsory retirement.

2. The factual matrix, bereft of unnecessary details, in a nutshell is that initially the petitioner joined on the post of Constable on 31.10.1986. The Petitioner continued to discharge his duties to the utmost satisfaction of his superior authorities and was having unblemished service career. After rendering about 24 years of meritorious service, to his utter misfortune, departmental proceeding No. 67/09 was initiated against the petitioner on the allegation that on 12.05.2009 after taking liquor, he misbehaved with public in the Court Campus showing indiscipline, dereliction of duty unbecoming of a police personnel, which also tarnished image of police. In pursuance to the aforesaid charge the matter was inquired into by the Inquiry Officer who held the petitioner guilty in its report

dated 05.01.2010, vide Annexure-1 to the writ application.

3. The petitioner after coming to know about the findings of the inquiry submitted representation to the Superintendent of Police, Dhanbad on 15.02.2010 vide Annexure-2 to the writ application, enumerating his defence praying thereby for sympathetic consideration of his case. However, on the basis of the inquiry report in departmental proceeding No. 67/09 the Superintendent of Police, Dhanbad issued show cause to the petitioner for filing response to the proposed punishment of dismissal from services, vide Annexure-3 to the writ application. Thereafter, the Superintendent of Police, Dhanbad vide Memo No. 1294 dated 04.03.2010 dismissed the petitioner from services vide Annexure-4 to the writ application.

4. Being aggrieved by the order dated 04.03.2010 issued vide Annexure-4 to the writ application, the petitioner submitted an appeal before the appellate authority-Deputy Inspector General of Police, Coal Range, Bokaro, who vide order dated 05.07.2010 modified the order of punishment from dismissal to compulsory retirement, as evident from Annexure-5 to the writ petition.

5. A counter-affidavit has been filed on behalf of the respondent Nos. 2 and 3 repelling the averments made in the writ application. At the outset, objection has been raised on the maintainability of the writ petition for not exhausting alternative remedy of revision before D.G.-cum-I.G., Jharkhand against the order of appeal passed by the Deputy Inspector General of Police. On merit of the case, it has been contended, inter alia, that charge was framed against the petitioner for indulging himself in indisciplined conduct and for creating raucous after getting drunk in the Court campus, as per Annexure-A to the counter-affidavit. On the basis of the said charge-sheet, the petitioner was suspended and departmental proceeding No. 67 of 2009 was initiated against him by O/C-cum-Inspector, Jharia Police Station, who submitted his report on 05.01.2010, vide Annexure-B to the counter-affidavit. The conducting Officer after considering the statement of the witness and other evidences and upon the explanation submitted by the petitioner found him guilty of the charges. The disciplinary authority after examining the materials available on record, agreed with the conducting officer and thereafter passed an order vide Annexure-C to the counter-affidavit asking for second show cause explanation on 19.2.2010 from the petitioner as to why he should not be dismissed from the services due to indiscipline, dereliction of duty and creating nuisance under influence of alcohol in the Court premises unbecoming of a police personnel which was explained by the petitioner by letter dated 24.02.2010, vide Annexure D to the counter affidavit but the same was not found to be satisfactory. The respondents after finding the charges to be serious and grave passed an order, vide Annexure-E dated 04.03.2010, dismissing the petitioner from services, vide Annexure-E to the counter-affidavit. Thereafter, the petitioner preferred an appeal before the Deputy Inspector General of Police Coal Range, Bokaro against the dismissal order, who after having minutely scrutinizing the entire material available on

record, agreed with the order passed by conducting Officer as well as respondents and dismissed the appeal vide Annexure-F to the counter-affidavit. It has further been submitted that the punishment given to the petitioner is proportionate to charges levelled and proved.

6. Heard Mr. Mahesh Tewari, learned counsel appearing for the petitioner and Mrs. Rakhi Rani, JC to S.C. III, learned counsel appearing for the respondents. Perused the records.

7. Learned counsel for the petitioner while assailing the impugned order of punishment has assiduously argued the following points for consideration:-

(i) Learned counsel for the petitioner has submitted that the impugned order of punishment of dismissal from services based on inadmissible evidence infringes Articles 14 and 16 of the Constitution of India.

(ii) Learned counsel further submits that the inquiry report on which the petitioner has been visited with major punishment is based on hearsay evidence without any definite charge/complaint.

(iii) Learned counsel for the petitioner further submits that the quantum of punishment is grossly disproportionate to the alleged charges.

(iv) Learned counsel further submits that the provisions infringes Rule 116(c) of the Police Manual has not been adhered to. Neither any complaint has been made nor any witness has been examined to bring home the charges, therefore, initiation of departmental proceeding is bad being violative of Rule 116(C) of the Police Manual.

8. Learned counsel for the respondents has dexterously submitted that the impugned order passed by the Disciplinary Authority and the Appellate Authority do not call for any interference since appropriate punishment have been inflicted basing on the grave charges coupled with the findings of the Inquiry Officer.

9. On perusal of the records and having heard the respective counsel at length, the impugned order of punishment under Annexures-4 and 5 are not legally sustainable due to following facts, reasons and judicial pronouncement:-

(i) It appears from the charge dated 29.5.2009 Annexure-A to the counter-affidavit that on 12.05.2009 at about 2 P.M. in the Court premises, the petitioner under influence of alcohol committed misbehavior with the general public thereby tarnishing the image of the police, such act on the part of the petitioner amounted to indiscipline, dereliction of duty and unbecoming of a police personnel. In the said charge, no complaint by any police of Dhanbad has been mentioned, therefore, the very charge appears to be vague. Moreover Rule 116(c) of the Police Manual has been given a complete go by rendering the dismissal from services legally fallible and vitiating the disciplinary proceeding. The Inquiry Officer however, has taken evidence of witnesses but has not come to a definite conclusion. Therefore, the alcohol test ought to have been

conducted to bring home the charges and in absence of any alcohol test the allegations made in the charge cannot take the place to proof. Therefore, the whole proceeding appears to be based on conjectures and surmises and oral evidences without any definite proof of consumption of alcohol by the petitioner. Moreover, nothing has been brought on record regarding the previous antecedent of the petitioner nor any misconduct stated to have been committed by the petitioner during twenty four years of services rendered in the police department.

(ii) View taken by this Court gets fortified by the decision of the Hon''ble Apex Court rendered in the case of Munna Lal Vs. Union of India (UOI) and Others, (2009) 123 FLR 521 : (2010) 1 LLJ 11 , wherein at paragraph 5, the Hon''ble Apex Court has held as under:

"5. In the absence of positive evidence, we are of the view that the charge levelled against the appellant was not proved satisfactorily. In the absence of sufficient proof, the disciplinary authority should not have imposed such penalty. Therefore, the punishment imposed was illegal and the appellant is entitled to be reinstated in service and he is entitled to get 50% of the back wages for the period he was out of service. The respondents are directed to reinstate the appellant in service forthwith. The appellant's service during this period would be treated for other service benefits such as seniority, increment and pension."

(iii) Looking at the impugned order of punishment vide Annexures 4 and 5 to the writ application, it appears that the punishment is found to be disproportionate to the nature of misconduct. Although, scope of judicial review on the quantum of punishment is very limited but the Court would interfere only when the penalty imposed appears to be disproportionate to the nature of misconduct so as to shock the conscience of this Court.

10. On the conspectus of facts, it appears that the impugned order of punishment do not commensurate with the misconduct, therefore, on the doctrine of proportionality the impugned orders of punishment vide Annexures 4 and 5 warrants interference by this Court.

11. Accordingly, the impugned orders dated 04.03.2010 passed by Superintendent of Police, Dhanbad, vide Annexure-4 and also the order dated 05.07.2010 passed by the Appellate Authority i.e. Deputy Inspector General of Police, Coal Range, Bokaro vide Annexure-5 are set aside and the writ petition is remitted back to the disciplinary authority with a direction to pass appropriate order on the quantum of punishment within a period of two months from the date of receipt/production of copy of this order, in accordance with law.

12. With the aforesaid observations and directions, this writ petition stands disposed of.