
(2014) 11 JH CK 0100
In the Jharkhand High Court
Case No : W.P.(S) No. 1737 of 2008

Karuna Shankar Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2015) 1 JLJR 417

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Om Prakash Singh, Advocates for the Appellant; M.D. Mokhtar Khan, Advocates for the Respondent

Judgement

Sujit Narayan Prasad, J.—Petitioner being aggrieved with the orders dated 03.02.1994, 04.10.1994, 07.04.2006 and 20.11.2007 by which he has been removed from service, has preferred this writ petition.

2. The brief facts of this case as pointed out by the counsel for the petitioner is that, while the petitioner was discharging his duty as constable in B.T.N Mines Turandeeh Project Sunder Nagar, Bihar, he was served with the memorandum of charge alleging therein that while he was on duty on 23.12.1992, he was found absent from his duty post without any information or permission from the competent authority.

3. The second charge has been leveled against the petitioner that on 23.12.1992 at about 10.15 hours he left his duty post and came to old security barrack engaged himself in removing copper and as such the petitioner was found engaged in removing copper cable pieces and was caught red handed along with three meters of cooper cable pieces.

4. The third charge has been leveled against the petitioner that from 16.05.86 to 01.09.86 and from 22.08.91 to 04.11.1991, the petitioner was punished on the different occasions vide various orders.

5. Thereafter, the petitioner was directed to give his reply to the said memo of charge which the petitioner has given against the entire allegation. The petitioner was permitted to appear before duly constituted Inquiry Officer and the Inquiry Officer has found the charge Nos. 1 and 2 not proved but charge No. 3 was found to be proved.

6. The counsel for the petitioner has submitted with respect to charge No. 3 the petitioner has subsequently been exonerated from these charge which has not been taken into consideration by the disciplinary authority. It has been pointed out by the counsel for the petitioner that the disciplinary authority without going through the enquiry report has imposed the major punishment of dismissal from service by holding that all the charges have been found to be proved by the Inquiry Officer, in exercise of power conferred under Rule 21(a) of CISF Rules, 1969, the petitioner was removed from service against which he preferred appeal and revision, but the same was also dismissed.

7. Learned counsel for the petitioner has submitted that when the charge Nos. 1 and 2 were not found to be proved by the Inquiry Officer and only the charge No. 3, which relates to the earlier proceeding in which he was punished, but exonerated has been found to be proved, imposing punishment of dismissal is improper. It has been submitted that the disciplinary authority ought to have assigned the reason of difference with the finding of enquiry officer, providing opportunity to file representation regarding difference of opinion regarding charge Nos. 1 and 2 while in charge No. 3 he has already been exonerated earlier, but without doing this, the order of punishment is absolutely in violation of principle of natural justice, in support of contention judgment of Hon"ble Apex Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, has been referred. Para 19 of the said judgment is quoted herein below:

".....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, required 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."

8. On the other hand, learned counsel for the respondent-Central Industrial Security Force has opposed the prayer made on behalf of the petitioner and submitted that although the charge Nos. 1 and 2 have not been proved but taking into consideration the antecedents of the petitioner, he was not fit to render his service. The order of removal has got no infirmity and hence needs no

interference by the Court.

9. Heard the parties.

10. After perusing the record, the admitted position is that a full-fledged departmental proceeding has been initiated against the petitioner for proving the three charges, the Inquiry Officer after finding defence reply of the petitioner has found charge Nos. 1 and 2 not proved but however charge No. 3, which relates to earlier incidents of the petitioner, was found proved by the enquiry officer.

11. So far as the charge No. 3 is concerned the petitioner has given specific statement at para 10 of the writ petition that charge No. 3 was framed against him, but he was discharged from all the charges. This statement of the petitioner has not been denied by the respondent in the counter affidavit.

12. From perusal of the impugned order passed by disciplinary authority, I find that the disciplinary authority has inflicted major punishment of removal of petitioner from service by giving finding that enquiry officer has found the charges proved against the petitioner but he has failed to consider finding given by the enquiry officer in which the enquiry officer has specifically come to the conclusions that charge Nos. 1 and 2 has not been found to be proved. Since charge Nos. 1 and 2 has not been proved by the enquiry officer, the respondents while imposing the punishment of removal from service ought to have given reasons of the difference with the findings given by the Inquiry Officer and should have provided opportunity of being heard to the petitioner, but that has not been done. Hence the order of dismissal on the basis of the said finding of the disciplinary authority is not sustainable in the eye of law.

13. Further, so far as the charge No. 3 is concerned, the petitioner has given specific statement that the petitioner has been exonerated from charge No. 3 and same has not been disputed by the counsel for the respondent in the counter affidavit, hence on the basis of charge No. 3, the order of dismissal passed by the disciplinary authority is not sustainable. Hence, reliance can be placed on the judgment of Apex Court delivered in case of Canara Bank and Others Vs. Swapan Kumar Pani and Another, . In this case first charge was already covered by the charge-sheet framed in an earlier departmental enquiry wherein he was exonerated from that charge. Apex Court held that, no fresh charge could be issued based on the same materials in absence of any statutory power.

14. In view of the facts and circumstances as stated herein above and on the basis of the legal proposition as has been settled by Hon''ble Apex Court as referred hereinabove, the impugned order suffers from infirmity, as such the same is not sustainable in the eye of law, accordingly, it is hereby quashed.

15. However liberty is accorded to the respondents to proceed a fresh in accordance with law, take appropriate decision within reasonable period.

16. The writ petition is disposed of accordingly.