

(2003) 01 JH CK 0086
In the Jharkhand High Court
Case No : CWJC No. 2209 of 2001

Manish Kumar Tiwary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 582

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sumir Prasad, for the Appellant; P.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—Heard Mr. Sumir Prasad, learned counsel for the petitioner and Mr. P.K. Prasad, learned counsel for the respondents.

2. The petitioner appears to be a habitual offender. Paragraph 7 of the order of the Appellate Court clearly indicates that he had overstayed four times earlier and on the previous occasion he had been removed from service after a proper departmental enquiry but taking a lenient view in a Revision Petition, the IG/ES had reinstated him in service on purely sympathetic consideration and had inflicted a lesser punishment of reduction of pay to the lowest stage for a period of three years with a further direction that he will not earn increments of pay during the period of reduction and that on expiry of the said period, the reduction will have the effect of postponing his future increments of pay.

3. Thus, what appears is that the petitioner was given a chance to improve but he did not do so. He belongs to a disciplined force. In a judgment passed by the Supreme Court in case of State of U.P. and others Vs. Ashok Kumar Singh and others, , the respondent therein i.e. the Police constable was removed from service as a sequel to a departmental enquiry. He challenged the order before the Tribunal at Lucknow and the Tribunal by order dated 29.6.1990 declined to

interfere. The Constable thereafter moved to High Court under Article 226 of the Constitution of India. The High Court concurred with the findings of the Tribunal and rejected the contentions of the constable which he had argued before the said Court. However, the High Court interfered with the punishment of removal although it had concurred with the findings and after making certain observations, held that the Opp. Parties (meaning thereby his employers) could impose a minor punishment.

4. The Supreme Court while noticing the aforementioned facts of that case held as follows :--

"8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions. We are unable to appreciate the High Court's observation that "his absence from duty would not amount to such a grave charge". Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the punishment does not commensurate with the gravity of the charge" especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

5. For the reasons stated above, this Court does not find any merit in the writ application. It is accordingly dismissed.