
(2015) 11 JH CK 0039
In the Jharkhand High Court
Case No : W.P.(S) No. 5406 of 2012

Manoj Kumar Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 AJR 304 : (2016) 1 JLJR 45

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Vijay Shankar Prasad, Advocate, for the Appellant; Anshuman Kumar, J.C. to A.G., for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia prayed for issuance of a writ of certiorari for quashing the order dated 19.10.2010 passed by respondent No. 4, vide Annexure-18 of the writ application relating to dismissal from services and also for quashing of the orders dated 07.05.2011 and 15.02.2012 passed by respondent No. 3 and 2 respectively, vide Annexures-20/1 and 22/1 confirming the order of punishment passed by respondent No. 4 and also for direction to the respondents to reinstate the petitioner in services along with all consequential benefits.

2. Bereft of unnecessary details, the facts as averred in the writ application, in a nutshell, is that initially the petitioner was appointed in the year 1987 as Constable and after enactment of Bihar Reorganization Act, 2000 the petitioner was posted within the territorial jurisdiction of State of Jharkhand and his services was allocated in the State of Jharkhand. The petitioner continued to discharge his duties to the satisfaction of authorities and has been awarded 50 prizes in the past. The petitioner was posted under respondent No. 4 in Confidential Section and thereafter, the petitioner was deputed to the office of respondent No. 5 since June 2009 and prior to deputation of the petitioner under

respondent No. 5, was allotted residential quarters at Dhanbad and thus, the house rent allowance was neither allowed nor computed in his salary prior to his deputation under respondent No. 5. The respondent No. 7 wrote a letter to the respondent No. 4 stating inter alia that the petitioner entered house rent allowance in his Muster Roll for the month of January 2010 and thereby, alleged that from the net it was found that house rent was entered in the salary of the petitioner for the month of March, September, October, November and January, totaling to Rs. 11,630/-. Vide memo dated 12.08.2010 (Annexure-4) issued by the respondent No. 4, the petitioner was asked to submit show cause as to why he should not be suspended and departmental proceeding be not initiated against the petitioner. After receipt of Annexure-4, the petitioner submitted his show cause on 15.08.2010 before the respondent No. 4 stating therein that the allegation levelled against the petitioner that he himself made entry in pay roll is not correct. In view of the facts, house rent can be allowed only after due approval by the competent authority of the department and passed by the passing authority and only thereafter, the amount was transferred to the account of the employee. The respondent No. 5 was directed to enquire into the matter in the light of show cause of the petitioner. Thereafter, the petitioner was suspended with immediate effect and in terms of office order charge sheet was issued for indisciplined action, duty less, insubordination of his superiors, suspected character and corrupt police personnel on the strength of exhibits. Thereafter, the petitioner submitted his representation before the respondent No. 4 requesting therein to revoke the suspension of the petitioner on the facts and circumstances mentioned therein. During course of enquiry, the respondent Nos. 5 and 7 were examined by the enquiry officer and enquiry officer gave his enquiry report and held the petitioner guilty of the charges and in terms of order contained in memo dated 19.10.2010 issued by the respondent No. 4, the petitioner has been dismissed from services on the basis of findings of respondent No. 6. Being aggrieved by the punishment order, the petitioner filed appeal before the respondent No. 3 on the ground mentioned therein, and the appellate authority vide memo dated 07.05.2011 has been pleased to uphold the order of punishment passed by the disciplinary authority. Thereafter, the petitioner submitted his appeal-cum- memorial petition before the respondent No. 2 and the same has been rejected vide order dated 15.02.2012.

Being aggrieved by the order of dismissal from services passed by the disciplinary authority and the order of the appellate authority as well as the memorial appeal, left with no alternative and efficacious remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance.

3. Per contra, counter affidavit has been filed on behalf of respondents controverting the averments made in the writ application. In the counter affidavit, it has been submitted that a departmental proceeding being Dhanbad Departmental Proceeding No. 169 of 2010 was initiated for his act of indulging in indisciplined conduct and being corrupt police officer having a doubtful character.

The charge against the petitioner vide memo dated 21.08.2010 was issued as per Annexure-A to the counter affidavit. It came to the light that during enquiry, petitioner had a house allotted within the campus of Dhanbad Police Station and he was deputed since March 2009 in accounts section as Computer Operator. It also came to light that vide D.O. No. 650 of 2010, the petitioner was posted to Accounts Section, where payments etc. of all police personnel of Dhanbad district is prepared in the month of February 2010 as Computer Operator. It also further came to light during enquiry that despite the fact that the petitioner was allotted a Government house, the petitioner withdrew Rs. 11,680/- for the month of March, September, October and November 2009 and January 2010 as housing allowance for personal gain, without the permission of competent authority and during enquiry conducting officer vide letter dated 28.09.2010 found the petitioner guilty of the charges as evident from Annexure-B to the counter affidavit. The then Superintendent of Police, Dhanbad after having perused the materials available on record and after having considered the entire materials minutely, passed vide order dated 30.09.2010 agreeing with the finding of conducting officer and asked for an explanation to the petitioner as to why he should not be dismissed from the services as per Annexure-C to the counter affidavit. The petitioner filed his final explanation vide letter dated 05.10.2010 but the then Superintendent of Police, Dhanbad did not find the explanation satisfactory and found the charge to be grave and serious, passed an order vide memo dated 19.10.2010 dismissing the petitioner from services and the appeal preferred by the petitioner has been rejected by respondent No. 3 as per Annexure-F to the counter affidavit. Thereafter, the petitioner filed memorial of the petition before respondent No. 2 which has also been rejected vide order dated 06.02.2012 as per Annexure-G to the counter affidavit.

4. Heard Mr. Vijay Shankar Prasad, learned counsel appearing for the petitioner as well as Mr. Anshuman Kumar, J.C. to A.G. appearing for the respondents.

5. Learned counsel for the petitioner has strenuously urged that petitioner was deputed under the respondent No. 5 in account section, vide Annexure-1, with effect from 02.06.2009 and as per his joining at deputed place, the bill prepared prior to his joining is unsustainable under the law and the same is contrary to charge. Learned counsel further submits that the respondent No. 6, who is subordinate to the respondent No. 5 has given perverse finding. Learned counsel further submits that he has not been provided adequate opportunity to cross examine the witnesses, moreover, petitioner has been punished ignoring the Rule 933 of the Police Manual. Learned counsel for the petitioner further submits that the impugned order of punishment is grossly disproportionate to the alleged proved charges.

6. As against the submission of learned counsel for the petitioner, learned counsel for the respondents has referred to the supplementary counter affidavit filed on behalf of respondent Nos. 2 to 8, wherein it has been submitted that the enquiry conducted by Deputy S.P, Headquarters, the petitioner has been

exclusively found guilty of the charges, vide Annexure-A to the supplementary affidavit and it has been transpired during enquiry that for personal benefit while the petitioner was deputed as Computer Operator in account section, he manipulated his payment of house allowance by making entry of the same, despite he was having official house. It has also transpired from the enquiry that since the entire process has been computerized, the payment details are detected in computer first and thereafter hard copy of the payment of bill is taken out and the same is noted down in master file. The petitioner made entry of housing allowance in the computer intermittently leaving a gap of one or two months in between so that he could not be caught. Hence, it was only the petitioner who was found to be guilty of excess withdrawal by making wrongful entry in the house allowance. It has also been submitted that the then S.P, Dhanbad, vide letter dated 30.12.2012 written to ADG Police mentioned the details of petitioner indulging in such misconduct, vide Annexure-B to the supplementary counter affidavit. It has further been submitted that the departmental enquiry under Rule 828 (C) of the Police Manual has been initiated against the then Accountant, Chandeshwar Ram and since the then Head Clerk retired in the year 2013, hence no proceeding initiated against him at the stage, as per the Annexure-C to the additional counter affidavit.

7. After having gone through the records and on hearing the learned counsel for the respective parties at length, the petitioner has not been able to make out a case for interference in view of the following facts, reasons and judicial pronouncements:

"(I) Admittedly, on the basis of allegations, charges has been framed and the enquiry has been conducted in which the petitioner has been found guilty by the enquiry officer. Basing on the findings of the enquiry officer, the disciplinary authority i.e. Superintendent of Police, Dhanbad (respondent No. 4) has passed the order of dismissal from services, which has been affirmed by the appellate authority (respondent No. 3), the Deputy Inspector General of Police and also the memorial petition filed by the petitioner has been rejected by the Director General of Police, Jharkhand (respondent No. 2).

(II) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied and moreover the fact finding given by the enquiry officer based on the material on record cannot be interfered with, as has been held by the Hon''ble Apex Court in the case of State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, , specially at paragraph 15, which is quoted herein below:

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappraise and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions"

8. On cumulative effect of the facts, reasons and judicial pronouncements and applying the aforesaid principles of Hon"ble Apex Court, as indicated hereinabove, the impugned order of dismissal dated 19.10.2010 passed by respondent No. 4, vide Annexure-18 of the writ application, and the orders of the appellate authority dated 07.05.2011 and 15.02.2012 passed by respondent No. 3 and 2 respectively, vide Annexures-20/1 and 22/1 confirming the order of punishment passed by respondent No. 4 do not warrant any interference by this Court..

9. Accordingly, the writ petition is dismissed being devoid of merit.