
(2014) 11 JH CK 0080
In the Jharkhand High Court
Case No : W.P. (S) No. 1908 of 2007

Mister Azad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 224, 225

Citation : (2015) 1 JLJR 357

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Anjani Kumar Verma and Azeemuddin, Advocates for the Appellant;
Priya Shreshta, J.C. to Sr. S.C. II, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.—By Court Heard learned counsel for the parties.

2. The petitioner has been dismissed from service by impugned order dated 13th August, 2005 passed by Senior Superintendent of Police, Ranchi, Annexure-5. The petitioner's appeal has also been rejected by the order passed by Deputy Inspector General of Police, Sough Chotanagpur Range, respondent No. 2 vide dated 29th October, 2005, Annexure-8. Thereafter, the appeal memorial preferred by the petitioner before the Director General-cum-Inspector General of Police, Jharkhand has also been rejected vide order dated 13th October, 2006, Annexure-6 to the writ application, which is also impugned herein.

3. As per charge-sheet submitted against the petitioner vide Annexure-2 dated 10th July, 2004, it appears that on 15th June, 2004 the petitioner was deputed for production of two notorious criminals, namely, Rajiv Ranjan Singh and one Jivan Kachchhap before Chief Judicial Magistrate, Ranchi at 11:30 A.M. It is alleged that the petitioner was supposed to take the criminals to Hazat, but he took them towards northern direction, whereafter the said Rajiv Ranjan Singh managed to escape. The petitioner therefore was found negligent in duty and was placed under suspension on 16th June, 2004. For his irresponsible conduct, negligence and failure to show diligence in exercise of duty as also for suspicious

behaviour he was proceeded against.

4. The Enquiry Officer after conclusion of the inquiry submitted his report on 25th June, 2005 vide Annexure-4 and thereafter the order of punishment of dismissal from service was passed after giving him opportunity to submit his reply to the second show cause. The order of dismissal as aforesaid is at Annexure-5 dated 13th August, 2005. The petitioner was also charge-sheeted along with accused Rajiv Ranjan Singh for offence under Sections 224 and 225 of the Indian Penal Code in Kotwali P.S. Case No. 319 of 2004. However, it is submitted by the learned counsel for the petitioner that before any decision could be rendered in the criminal trial which proceeded for the similar set of charges, the Disciplinary Authority imposed the punishment of dismissal from service and Appellate Authority has also confirmed the same. It is submitted that in the criminal case, the petitioner has been acquitted by the Court of Sub Divisional Judicial Magistrate, Ranchi vide judgment dated 18th January, 2006, while the accused, Rajiv Ranjan Singh has been convicted for the said offences and sentenced to undergo imprisonment. It is submitted that the witnesses, who have appeared in the departmental proceeding, have also deposed before the Trial court and more specifically the informant, Ram Prasad Mehta, who was P.W. 5 in the said trial.

5. The petitioner had preferred an appeal memorial before the Director General-cum-Inspector General of Police, Jharkhand after his acquittal, but the orders of dismissal from service have been confirmed by the said authority without considering the specific grounds of acquittal raised by the petitioner.

6. Learned counsel for the petitioner submits that where similar set of charges were the subject matter of a departmental proceeding and criminal trial, the respondents authorities should not have proceeded to impose punishment in the departmental proceeding and should have waited for outcome of the criminal trial.

7. Learned counsel for the petitioner has relied upon a judgment rendered by learned Division Bench of this Court in the case of State of Bihar and Others Vs. Javed Shaukat . It is submitted that learned Division Bench has also taken into account the ratio laid down by Hon"ble Supreme Court on such an issue of continuance of departmental inquiry in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . In any case, according to the learned counsel for the petitioner, even on merits he does have a good case, as it is not disputed that as per Police Manual Rules, in case of production of notorious criminals before the concerned Court, sufficient police force is required to be placed and that too with arms. It is submitted that in the instant case these two criminals were supposed to be produced by the petitioner alone who was not carrying any arms. He has also referred to the letter dated 16-1-2004 of the C.J.M., Ranchi (Annexure-3) to the Senior Superintendent of Police, Ranchi, respondent No. 3 on the requirement of sufficient police constables for the production of criminals. Even then, the petitioner did not allow the other criminal

Jivan Kachchhap to flee but could not manage to prevent the other criminal from fleeing away. It is also submitted that in the departmental proceeding proper opportunity was not given to him. However, it is finally submitted that Director General-cum-Inspector General of Police has not given due consideration to acquittal of the petitioner by the Trial court while upholding the punishment of dismissal from service. Learned counsel for the petitioner has submitted that the petitioner was in service since 1981 and had unblemished service record till before the incidence took place and there is no deliberate act on his part as alleged.

8. The respondents have appeared and filed their counter affidavit. It is their categorical case that the petitioner has been proceeded against departmentally for showing misconduct i.e. negligence in duty, irresponsible behaviour, severe lack of diligence in exercise of duty as also suspicious conduct. It is submitted that the proceedings were conducted in accordance with law and after due opportunity to the petitioner to submit his explanation against the charges leveled, which he did. However, his explanation was not found to be satisfactory by the Conducting Officer who found the charges established against him. After considering the inquiry report and the reply on the second show cause issued to the petitioner, the order impugned has been passed against him, as the charges are of serious nature, which have been found to be established. It is further stated that the petitioner was held guilty in the departmental proceeding, as it was found that in stead of taking the criminals to Hazat, which was 100 meters from the court concerned, he took them towards northern side of the Court campus. It is further submitted that even during the period of summer he did not see to it that the criminals were wearing a Shawl/Chadar, which raises serious doubts about the intention of the petitioner as also the acts of negligence on his part. It is submitted that the petitioner has been acquitted by the Trial court by giving him benefit of doubt. Therefore, even after consideration of his case of acquittal, the Director General -cum-Inspector General of Police has not found any infirmity in the orders of punishment and therefore rejected his appeal memorial. Therefore, according to the respondents, no interference is warranted in the impugned order of punishment.

9. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned orders, charge-sheet and the judgment rendered by trial court as also the judgment relied upon by learned counsel for the petitioner. It is to be observed that the petitioner was proceeded against departmentally for the aforesaid charges on the ground that from his custody one of the notorious criminal, Rajiv Ranjan Singh had escaped. That was also the basis for the criminal case instituted against him under Sections 224 and 225 of the Indian Penal Code along with the said accused person. However, the respondents appeared to have proceeded with departmental proceeding where several official witnesses deposed before the Conducting Officer such as one Ram Prasad Mehta, who was In-charge, Sadar Court Hazat, Ranchi as also the Deputy Superintendent of Police, Ranchi and a reader of Confidential Section, office of

Senior Superintendent of Police.

10. From perusal of the judgment rendered in the criminal case, it appears that the prosecution had adduced six witnesses, out of whom the Sub Inspector, Ram Prasad Mehta, In-charge Sadar Court Hazat was the prosecution witness No. 5. The other witnesses such as P.W. 1 and P.W. 6 also appear to be Constables. The Conducting Officer on the basis of findings recorded by the Enquiry Officer proceeded to hold the petitioner guilty of the alleged charges on the basis of the statement of the witnesses also Ram Prasad Mehta, Sub-Inspector produced during the inquiry. The Enquiry Officer held the petitioner responsible for causing escape of the notorious criminal, Rajiv Ranjan Singh. However, it appears that the prosecution witness No. 5, Ram Prasad Mehta, who was the informant of the case and also a witness in the departmental proceeding, in his deposition before the trial court which is also referred to in the judgment of the trial court at para 7, had made statement during the course of his deposition that he had not seen the incidence. He further stated that several correspondences had been made to the senior officers of lack of sufficient constables to guard the Hazat. He has also referred to the provision of Police Manual, as per which, ordinarily for production of 1-3 prisoners, 2 constables are to be deputed, while for notorious criminals, special force is to be deputed which are in the nature of 4 or 1-5 or sometime 1-6 and including a Havildar and 4 constables. He seems to have further stated that two notorious accused persons were produced by the petitioner, who was the sole Constable, though as per the Police Manual Rules, arms escort had to be provided. The learned Trial Court after consideration of the prosecution witnesses adduced, did not find the ingredients of the offences of Sections 224 and 225 of the Indian Penal Code established against the petitioner.

11. The petitioner appears to have raised the plea of his acquittal before Director General-cum-Inspector General of Police, Jharkhand in his appeal memorial. However, the appeal memorial of the petitioner appears to have been rejected in a cryptic manner without proper application of mind to the findings recorded by the learned Trial court on the similar set of charges where one of the witnesses was the same person, who was the informant and also a witness in the departmental proceeding. The Director General -cum-Inspector General of Police has gone with the findings recorded by the Disciplinary Authority and Appellate Authority that the petitioner was negligent in his duty in carrying these notorious criminals to safe place of Hazat and allowed one of them to escape. It therefore appears that after acquittal of the petitioner and the appeal memorial preferred by him, the Director General-cum-Inspector General of Police, Jharkhand has dismissed the same without proper application of mind to the relevant materials and grounds raised by him in a cryptic manner. The Hon'ble Supreme Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, , has held that the order of appellate authority even while affirming the order of disciplinary authority must contain some reasons, at least in brief, to show whether the appellate authority has applied its mind. It is an essential requirement of the rule of law that some

reasons must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation. Therefore, the impugned order dated 13th October, 2006, cannot be sustained in law as well as on facts as suffering from lack of proper application of mind.

12. Accordingly, the impugned order dated 13th October, 2006, Annexure-6 is quashed. The matter is remanded to the Director General-cum- Inspector General of Police, Jharkhand to take a fresh decision in the matter of appeal memorial of the petitioner in accordance with law.

13. This writ petition is partly allowed in the manner and to the extent as indicated hereinabove.

14. The records of departmental proceedings which were earlier produced before this Court pursuant to the order dated 22.6.2009 shall be remitted to the office of Senior Superintendent of Police, Ranchi.