

(2013) 11 JH CK 0067
In the Jharkhand High Court
Case No : C.W.J.C. No. 8059 of 1999 (P)

Mithilesh Kumar Ojha

APPELLANT

Vs

The State of Bihar and Sri S.B. Roy

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 JH CK 0067

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sunil Kr. Mahto, for the Appellant; Shivani Verma, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Assailing the penalty order dated 30.11.1987 discharging the petitioner from service, the appellate order dated 28.05.1993 and the memorial order dated 26.12.1994, the petitioner has approached this Court by filing the present writ petition. The brief facts of the case are that, the petitioner was appointed on the post of Matriculate Constable on 21.07.1976 and he proceeded for 10 days" leave on 12.09.1983. The petitioner was to report for duty on 24.09.1983 however, he could not report for duty and therefore, a departmental proceeding was initiated against the petitioner in which, inspite of notices to him he did not appear and therefore, an ex-parte enquiry was conducted. By order dated 23.11.1984, the petitioner was discharged from service. The petitioner preferred an appeal and the order of discharge dated 23.11.1984 was set aside by the appellate authority by order dated 21.01.1987 directing the disciplinary authority to give a fresh second show-cause notice to the petitioner and after taking into consideration his defence, pass a fresh order. Pursuant to order dated 21.01.1987, a second show-cause was issued to the petitioner, to which the petitioner replied and thereafter, the order of discharge dated 30.11.1987 has been passed. On appeal, the said order was affirmed by the appellate authority and the memorial filed by the petitioner has also been rejected.

2. A counter-affidavit has been filed stating as under,

6. That with regard to the statement made by the petitioner in paragraph 1 and 2, in the instant writ petition under reply, it is humbly stated and submitted that it will be proved from Annexure-2 and 3 of the writ petition that the concerned authorities had passed the orders as referred in the aforesaid annexures are valid legal and justified and the said orders were passed in connection with Departmental Proceeding No. 14/84. It is not necessary to repeat the contents of the said orders passed in the aforesaid proceeding, rather the aforesaid annexure will prove itself that there is no case in favour of the petitioner.

7. That it is humbly stated and submitted that the present writ petition is also not maintainable as the same has been failed by suppressing material facts. The Departmental Proceeding No. 61/83 was initiated against the petitioner, in which he had been suspended by the concerned authorities. It is further stated that in Departmental Proceeding No. 14/84, the petitioner was dismissed vide District order No. 1937/84.

8. That with regard to the statement made by the petitioner in paragraph-9, in the instant writ petition under reply, it is humbly stated and submitted that the orders passed by the Deputy Inspector General of Police and the Director General of Police are just and proper, legal and valid. The said orders were communicated to the petitioner.

9. That with regard to the statement made by the petitioner in paragraph-12 and 13, in the instant writ petition under reply, it is humbly stated and submitted that the same hence require no comment.

10. That with regard to the statement made by the petitioner in paragraph-14 to 17, in the instant writ petition under reply, it is humbly stated and submitted that the story of ex-parte hearing of the departmental proceeding is totally false and concocted. The same was passed to the knowledge of the petitioner. No error has been committed by the concerned authorities in holding the Departmental Proceeding.

3. Heard counsel for both the parties and perused the documents on record.

4. On 23.08.2013, on a contention raised by the learned counsel appearing for the petitioner, the respondents were directed to produce the enquiry report however, an affidavit has been filed by the respondents stating that the matter relates to 1984 and according to the Rules, the record of a case is preserved only for ten years and the record of the present case is not available.

5. The learned counsel appearing for the petitioner has submitted that though the petitioner had applied for extension of time, the authorities did not grant further extension. The petitioner remained absent from duty for the reasons beyond his control and therefore, the order of punishment passed against the petitioner is disproportionate to the misconduct alleged and found proved against the petitioner. He has further relied on the provision of Rule 826 of the Jharkhand

Police Manual and submitted that neither the defence of the petitioner was considered by the authorities in right perspective nor while awarding punishment of discharge from service, the mandatory provision of Jharkhand Police Manual has been considered by the disciplinary authority and therefore, the order of discharge as well as the appellate order are liable to be quashed by this Court.

6. The learned counsel appearing for the respondents has submitted that, since the petitioner remained absent throughout and he even did not participate in the departmental proceeding, an ex-parte departmental enquiry was conducted against the petitioner. After the direction given by the appellate authority on 21.01.1987, the petitioner was issued a fresh second show-cause notice, which has been replied by the petitioner. However, in the said reply the petitioner did not put forward any substantial reasons for his unauthorized absence from duty and therefore, the order of discharge from service has been passed against the petitioner. It is further submitted that the facts recorded in a properly constituted enquiry, cannot be interfered with by this Court while exercising jurisdiction under Article 226 of the Constitution of India and therefore, this matter does not require interference.

7. On a perusal of documents on record, I find that the departmental proceeding was initiated against the petitioner on 30.11.1984. The petitioner has taken a specific defence that his old and ailing father has been suffering from cardiac problem and as his condition become serious, he could not report for duty. This is also a matter of record that the petitioner was on leave from 12.09.1983 and his application seeking extension of leave was neither accepted nor rejected and a departmental proceeding was initiated against him. Rule 826 of the Jharkhand Police Manual is extracted hereinbelow:

Rule 826: Discrimination necessary in awarding punishments. The punishment awarded should be in conformity with the gravity of offence with which the officer is charged and offences involving moral turpitude shall be carefully discriminated from smaller wrong doings. It should also be borne in mind that the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding shall not be taken into account for determining the quantum of punishment.

The objective of awarding punishment is firstly to keep a record of the wrong doings of the officer and secondly as a measure of correction to alert him to improve his work and conduct. Several punishments awarded in one lot such as during inspections which do not provide an opportunity to the delinquent officer to improve himself are not likely to be helpful. In any case, the punishment cannot be awarded without carefully considering the defence of the delinquent officer.

8. On a perusal of the provision as contained in Rule 826 of the Jharkhand Police Manual, I find that there is a statutory duty cast upon the department to discriminate while awarding punishment. The misconduct alleged against the

petitioner is neither of the gravest nature nor any such finding has been recorded by the departmental authority. Absence from duty has been made a misconduct though, nowhere in the Jharkhand Police Manual it has been considered a "grave misconduct". I further find that misconduct alleged against the petitioner does not relate to an act of moral turpitude and therefore, I am of the view that the order of discharge from service is disproportionate to the charge framed against the petitioner.

9. The learned counsel appearing for the respondents would next submit that in Mithilesh Singh Vs. Union of India (UOI) and Others, the Hon''ble Supreme Court has held that in case where an employee belonging to the disciplined police force if found absent from duty, the matter should not be taken lightly and it warrants removal from service. I find that no such law has been declared by the Hon''ble Supreme Court. In the result, this writ petition is allowed and the matter is remitted back to the disciplinary authority for passing fresh order as discussed hereinabove.