
(2015) 07 JH CK 0024
In the Jharkhand High Court
Case No : W.P. (S) No. 1208 of 2012

Mithilesh Pandey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Citation : (2015) 3 JLJR 567

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Ajay Kumar Pathak, for the Appellant

Final Decision : Disposed Off

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Ajay Kumar Pathak, learned counsel for the petitioner and learned J.C. to A.G. In this application, the petitioner has prayed for quashing the order dated 14.3.2011 as contained in Memo No. 589 passed by the respondent No. 3, whereby and whereunder an order of compulsory retirement of the petitioner has been passed. The petitioner has further prayed for quashing the order dated 29.10.2011 as contained in Memo No. 1718 passed by the respondent No. 2 by which the appeal preferred on behalf of the petitioner against the order dated 14.3.2011 has been rejected. A prayer has also been made to reinstate the petitioner on the post of Hawaldar and pay him to salary since 14.3.2011 till date.

2. The petitioner was working in the Police Department on the post of Hawaldar. The petitioner was served with a memorandum of charge as contained in Memo No. 2992 dated 29.11.2010 wherein allegation was that the petitioner on 12.11.2010 at 7.30 p.m. without any information had absented from duty after taking alcohol and lying on the road in an unconscious state. The petitioner submits that the explanation to the memorandum of the charges was submitted by him but having not been satisfied a departmental proceeding was initiated by the petitioner in which the inquiry officer had found proved the charges levelled

against the petitioner. Subsequent thereto, an order was passed by the respondent No. 3 as contained in Memo No. 589 dated 14.3.2011 in which the petitioner was awarded punishment of compulsory retirement. He had preferred appeal against the aforesaid order, which was dismissed on 29.10.2010 by the respondent No. 2, which led the petitioner to prefer the present writ application.

3. It has been submitted by Mr. A.K. Pathak, learned counsel for the petitioner that the medical report pursuant to the examination of the petitioner did not find, the petitioner in an alcoholic state. It has further been submitted that inquiry officer, the disciplinary authority as well as appellate authority took into consideration certain extraneous matter which were not mentioned in the charge. It has therefore been stated that since the inquiry proceeding was conducted beyond the purview of the charges issued to the petitioner, the entire departmental proceeding is vitiated and the same should be quashed. Learned counsel for the petitioner has also referred to Rule 826 of the Jharkhand Police Manual which precludes the disciplinary authority from taking into consideration the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding and it shall not be taken into account for determining the quantum the punishment.

4. Learned J.C. to A.G. on the other hand has submitted that apart from the fact, that the petitioner was earlier inflicted with several punishments including punishments on account of consuming alcohol and unauthorized absence from duty, the petitioner was also found guilty of the charge levelled against him of having been found in the road in an unconscious state after consuming alcohol. Learned J.C. to A.G. has further submitted that the case of the petitioner fails within Rule 854-A(6) in order to submit that if the punishment of compulsory retirement is proposed. In such circumstances and in terms of the rule, no departmental proceeding or show cause is required but, if a departmental proceeding has been initiated for any lapse of the delinquent, compulsory retirement can be awarded to him after issuing him show cause even though he may not have completed 21 or 25 years of service. It has thus been submitted that on account of misconduct of the petitioner the proceeding was initiated and after following the principles of natural justice the order of punishment of compulsory retirement was inflicted upon the petitioner.

5. The charges which were framed against the petitioner as contained in Memo No. 2992 dated 29.11.2010 reveals that the petitioner was unauthorizedly absent and he was subsequently found to be in an unconscious state at about 7.30 p.m. on the road. The charges which were levelled against the petitioner were supported by the witnesses in the inquiry report dated 31.1.2011. The enquiry officer though had taken into consideration certain facts which were never present in the charge with respect to the past conduct of the petitioner. Rule 826 of the Jharkhand Police Manual specifically lays down that the previous record of service of the officer concerned, if it is not already included charge of the proceeding shall not be taken into consideration for determining the quantum of

punishment. The inquiry officer as well as disciplinary authority however had taken note of past conduct of the petitioner while inflicting the punishment of compulsory retirement from service. The disciplinary authority while issuing the order dated 14.3.2011 seems to have been weighed down by the findings of the inquiry officer as well as the previous conduct of the petitioner. The disciplinary authority respondent No. 3 did not take into consideration the specific provision as laid down in Rule 826 of the Jharkhand Police Manual which debars taking into consideration the previous record of the service of the officer concerned, if it has not been included in the charge with respect to unauthorized absence and the petitioner being in an intoxicated condition. In such circumstances, the respondent No. 3 should not have been swayed by the previous record of the petitioner rather he should have considered the quantum of punishment on the basis of the inquiry report. The appellate authority while passing the order as contained in Memo No. 1718 dated 29.10.2011 also had not taken into consideration the exclusion clause enumerated in Rule 826 of the Jharkhand Police Manual and has mainly referred to the previous conduct of the petitioner while dismissing the appeal. Accordingly, the quantum of punishment which has been inflicted upon the petitioner being influenced by the previous misconduct and previous punishment awarded to the petitioner and which is in conflict with Rule 826 of the Jharkhand Police Manual is hereby quashed and set aside as being not in accordance with law.

6. The matter is remitted back to the respondent No. 3 to pass a fresh order in accordance with law after taking into account the findings of the enquiry authority only with respect to the charge which was levelled against the petitioner and thereafter pass a reasoned and speaking order within a period of four weeks from the date of receipt/production of a copy of this order. This writ application is, hereby, disposed of.