

(2005) 08 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3043 of 2005

Naesh Kumar Sahay

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Jharkhand Service Code, 2001 — Rule 97

Citation : (2005) 4 JCR 205

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Siddhartha Ranjan, for the Appellant; J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioner against the order contained in D.O. No. 957/2005, dated 19th March, 2005 issued by the Superintendent of Police, West Champaran (Bihar), whereby and whereunder, the petitioner has been inflicted punishment for forfeiting increment for six months, equivalent to one black mark.

2. As the matter can be disposed of on short point, it is not necessary to discuss all the facts except the relevant fact. While the petitioner was posted as Sub-Inspector of Police at Betia was suspended vide Order No. 363/2004, dated 13th March, 2004. A departmental proceeding was initiated by the Superintendent of Police, West Champaran at Betia vide departmental proceeding No. 43 of 2004 (Betia District) vide Memo No. 1106, dated 15th June, 2004. It was alleged that the petitioner was absent from duty on unauthorised leave. The petitioner filed show Cause reply regarding charges levelled against him on 31st August, 2004 specifically stating therein that he has been allowed leave of the period of absence by the higher authority i.e. the Deputy Inspector General of Police, West Champaran. The enquiry officer after giving opportunity to the parties and after taking into consideration the relevant documents available on record submitted his report on 15th March, 2005 (vide Annexure 13), in which the petitioner was

held "not guilty" for the charges levelled against him.

3. According to the petitioner, in the meantime he was allocated the State of Jharkhand after reorganization of the State and relieved from the State of Bihar on 1st September, 2004 and joined the State of Jharkhand. Now he is posted as Sub-Inspector of Police at Seraikella (Jharkhand).

4. The grievance of the petitioner is that though he is posted at Seraikella in the State of Jharkhand and was held "not guilty" by the enquiry officer, the Superintendent of Police, West Champaran at Betia (Bihar), who had no jurisdiction, without any notice to the petitioner merely differing with the finding of the enquiry officer, issued the impugned order of punishment.

5. 7th respondent, Superintendent of Police, Betia, West Champaran has appeared and filed counter affidavit. It has not been disputed that on 18th March, 2005 when the impugned order was passed by Superintendent of Police, Betia, West Champaran, the petitioner was not posted under him nor he was posted in the State of Bihar. Rather he having been allocated the State of Jharkhand and was working since September, 2004 in the State of Jharkhand. It has also not been pointed out by the 7th respondent that any separate show cause notice was issued on the petitioner while differing with the finding of the enquiry officer. Without any such notice, the impugned order of punishment was passed.

6. Similar issue fell for consideration before the Court in the case of State of Bihar v. Arvind Vijay Bilung, reported in 2002 (1) JCR 401 (Jhr) : 2002 (1) JLR 697. A Division Bench of this Court held that the Government servants whose service has been placed under the State of Jharkhand in respect to them the State of Bihar has no jurisdiction to take any action. If the State of Bihar contemplates action against such a person posted in the State of Jharkhand, it is open to the State of Bihar to forward such material to the State of Jharkhand for such action, as it considered appropriate. The case of the petitioner being covered by the decision in the case of Arvind Vijay Bilung, this Court had no option but to set aside the impugned order contained in D.O. No. 957/2005, dated 18th March, 2005 issued by the Superintendent of Police, West Champaran (Bihar). Further the petitioner having not been given opportunity to file reply after the Superintendent of Police, Betia, West Champaran, differed with the finding of the enquiry officer, the impugned order being violative of Rules of natural justice, it is fit to be set aside. Accordingly, the impugned order contained in D.O. No. 957/2005, dated 18th March, 2005 issued by the Superintendent of Police, West Champaran (Bihar), is set aside. However, this order will not stand in the way of the competent authority to pass any order in accordance with law.

7. If any higher authority for the Competent Authority had already sanctioned the leave for the period in question, the petitioner may bring it to the notice of the Superintendent of Police, Saraikella, who will determine the question of payment of salary for the period of leave, if any decision has already been taken

the officer will communicate the same to the petitioner within a period of one month from the date of receipt/production of a copy of this order.

8. So far as the payment of salary for the period of suspension is concerned, the authority will also decide as to whether the said period of suspension be treated to be on duty or not and what salary to which the petitioner will be entitled in terms of Rule 97 of the Jharkhand Service Code. On such decision being taken, the respondent concerned will pay the admitted dues to the petitioner, if found payable, within a period of three months from the date of receipt/ production of a copy of this order.

This writ application is allowed with the aforesaid observations and directions.