
(2016) 02 JH CK 0161
In the Jharkhand High Court
Case No : L.P.A. No. 159 of 2015

Nagina Paswan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 150 FLR 392 : (2016) 2 JBCJ 423 : (2016) 2 JCR 474 : (2016) 2 JLJR 315

Hon'ble Judges : Virender Singh, C.J. and S. Chandrashekhar, J.

Bench : Division Bench

Advocate : S.N. Pathak, Senior Advocate, for the Appellant; Anil Kumar, J.C. to A.G, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.

1. Aggrieved by penalty of dismissal from service, the appellant approached this Court in W.P.(S) No. 6176 of 2009 which has been dismissed vide, impugned order dated 04.02.2015.

2. The appellant who was appointed as Constable in the year, 1977, was promoted to the post of Havildar in 1987. While posted at Chaibasa, the appellant was served show-cause notice dated 26.02.2004 on the allegation that he harassed a girl namely, Ms. Elzina Badh to marry him and he engaged himself in running a truck on hire. The appellant submitted his reply to the show-cause notice denying acquaintance with Ms. Elzina Badh. He denied that he is a Father (Padri) and that he threatened the said girl to write a love letter and demanded Rs. 3,00,000/-. A departmental proceeding was initiated against the appellant, in which the department examined 6 witnesses in support of the charges framed against the appellant. The Enquiry Officer submitted report dated 24.02.2004 holding the charges except, the charge of not looking after his family properly,

proved. The Disciplinary Authority vide, order dated 31.03.2004 imposed penalty of dismissal from service. The Appellate Authority as well as the Revisional Authority did not accept challenge to the penalty order. Constrained, the appellant unsuccessfully approached this Court in W.P.(S) No. 6176 of 2009.

3. Heard the learned counsel for the parties.

4. Mr. (Dr.) S.N. Pathak, the learned Senior Counsel for the appellant contended that, though the Enquiry Officer has found only two charges proved, the Disciplinary Authority passed the penalty order dated 31.03.2004 on an erroneous assumption that all the charges framed against the appellant have been found proved. It is contended that the charge of harassing Ms. Elzina Badh is fabricated and motivated and the appellant has not committed a misconduct inasmuch as, the charge against him is not of contracting a second marriage. In so far as the charge of engaging himself in running a truck business, framed against the appellant is concerned, it is submitted that his son is in the transport business which is not prohibited under the service rules and therefore, the said charge also cannot be held proved. Questioning legality of the impugned order dated 04.02.2015 in W.P.(S) No. 6176 of 2009, the learned Senior Counsel submits that the learned Single Judge ignored the plea raised by the appellant that the Appellate Authority and the Revisional Authority both failed to consider the specific plea raised by the appellant challenging the penalty of dismissal from service.

5. Mr. Anil Kumar, the learned J.C. to Advocate-General appearing for the respondent-State of Jharkhand submits that the charge, of harassing and forcing a girl for marriage, framed against the appellant has been found proved and, that itself is sufficient to impose a penalty of dismissal from service. Contending that considering the scope of judicial review under Article 226 of the Constitution of India, the learned counsel submits that the learned Single Judge has rightly stayed its hands away from the findings recorded during the departmental enquiry.

6. We have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. The following charges were framed against the appellant:

"Charge I. The delinquent posing himself a Father of Church started visiting the residence of Ms. Elzina Badh. He posted letters written in the name of other persons to the residence of Ms. Elzina Badh. On protest of the father of Ms. Elzina Badh the delinquent threatened him brandishing his official pistol and he forced the girl to write a love letter and he demanded Rs. 3,00,000/- else, the love letters would be published in the news papers.

Charge II. While on duty in Kumardungi P.S. and Majhgaon P.S., the delinquent was running a half-dala truck on hire in his own supervision.

Charge III. The wife of the delinquent namely, Anita Daizy John submitted a

written complaint alleging that he was not looking after his wife and two children and he was not providing financial support to them."

8. During the departmental enquiry the department examined 6 witnesses including, Ms. Elzina Badh and her sister Smt. Anugrah Swamy. The appellant was afforded sufficient opportunity to defend himself and he cross-examined the material witnesses at length. In the cross-examination, Ms. Elzina Badh confirmed that she knew the appellant since he visited for "Confirmation". Corroborating the charge levelled against the appellant that he used to send different persons to her for pressurising her to marry him, Ms. Elzina Badh has stated in cross-examination that the appellant had sent Polush Khalko, Kalima Khatoon and one other person to her. The sister of Ms. Elzina Badh has confirmed that the appellant visited her father on the pretext of blessing her younger sister and thereafter, he started blackmailing her sister. She has also confirmed that the appellant threatened her to kill. Responding to a question in the cross-examination that she has levelled false accusations against the appellant for extracting money from him, the witness stated that her husband is in service and he possessed 30 acres land. The witnesses examined by the department stated during the departmental enquiry that when the appellant offered Ms. Elzina Badh to go to a park, the parents of the girl asked the appellant not to visit their house. While the said girl was going to the college, the appellant took her to the court and got papers signed. Thereafter, the girl left her parents' place and went to her sister's home at Dongakata. However, there also, the appellant sent different persons on the pretext of seeking her well-being. On 27.06.2003, one Kalima Khatoon visited the said girl with cloths and bangles and asked her to marry the appellant. Thereafter, a written complaint was made in the police station, on the basis of which Chakradharpur P.S. Sanha No. 726 dated 27.06.2003 was lodged. The Enquiry Officer noticed that the appellant sent a threatening letter through post to Soma Ram Swamy who is married to the sister of Ms. Elzina Badh. Another letter written by the appellant disclosed that he wanted to marry the girl which was protested by his family. The delinquent was issued second show-cause notice dated 26.02.2004 along with a copy of the enquiry report, which was replied by the appellant.

9. The Disciplinary Authority has noticed that the gravest charge in the charge-memo framed against the appellant was to torture a girl illegally for over a period of two years and inspite of protest from her family, he pressurised the said girl to marry him. In view of the aforesaid facts, the observation of the Disciplinary Authority that the Enquiry Officer has found all the charges framed against the appellant proved, pales into insignificant. The appellant conducted himself in a manner unbecoming of a member of the disciplined force. Torturing a girl and threatening and alluring the girl besides, threatening her family members and writing inappropriate letters, definitely constitutes a serious misconduct which warrants dismissal from service. Considering the nature of allegations and the findings recorded by the Enquiry Officer, the observation of the Disciplinary Authority that the Enquiry Officer has found all charges proved,

would not materially affected the penalty order dated 31.03.2004 passed by the Disciplinary Authority. The mistake which has crept in the penalty order dated 31.03.2004 though, an error apparent on record, is not such an error which would vitiate the penalty order passed by the Disciplinary Authority. The discussion in the penalty order dated 31.03.2004 does not reflect that the charge of not maintaining his family was considered as an important circumstance for awarding penalty of dismissal from service.

10. The learned Single Judge noticed that the Disciplinary Authority finding the first charge very serious in nature, has rightly passed order of dismissal from service. Noticing the judgment in "High Court of Judicature at Bombay v. Uday Singh & Ors.", , (1997) 5 SCC 129 wherein, it has been held that, "the doctrine of proof beyond doubt has not application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct..... ", the learned Single Judge has held that the Disciplinary Authority has rightly come to a conclusion that the misconduct of the appellant warrants dismissal from service. The learned Single Judge has also noticed the decision in "Nirmala J. Jhala v. State of Gujarat & Anr.", , (2013) 4 SCC 301 wherein, the Hon"ble Supreme Court has observed as under;

"22. "It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings."

11. In so far as, the contention that the order passed on the memorial appeal is a cryptic order which does not take notice of the contentions raised on behalf of the appellant is concerned, we find that Rule 853 of the Police Manual does not confer power upon the Revisional Authority akin to the power of the Appellate Authority. While the Appellate Authority may re-appreciate the evidence and, disagree with the penalty order passed by the Disciplinary Authority, if the penalty order is based on no evidence or the enquiry was conducted in complete violation of the rules of natural justice, the Revisional Authority is required to examine whether the order of the Appellate Authority suffers from material illegality which resulted in miscarriage of justice. Keeping in view the nature of power under Rule 853 of the Police Manual, the Revisional Authority was not required to pass a detailed order. In "S.N. Mukherjee v. Union of India" , (1990) 4 SCC 594, the Hon"ble Supreme Court has observed, "the need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge".

12. In view of the above discussions, we find no merit in the instant Letters Patent Appeal and the same warrants dismissal.

Ordered accordingly.