
(2016) 09 JH CK 0072
In the Jharkhand High Court
Case No : W.P. (S) No. 4419 of 2010

Pashupati Mishra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Citation : (2017) 1 JLJR 376

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Rakesh Kumar Shahi, J.C. to A.A.G, for the Respondent; Mr. Prashant Pallav, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J. - In the instant writ application, the petitioner has, inter alia, prayed for issuance of an appropriate writ in the nature of certiorari for quashing the order dated 23.10.2008 vide memo no. 2118 passed by the D.I.G., Jharkhand Armed Police, Ranchi, whereby the appeal filed by the petitioner against the order dated 08.04.2008 vide memo No. 242/Confidential issued by the Commandant, Jharkhand Armed Police-8, Lesliganj, Palamau was affirmed by the respondent no. 3 and further prays for quashing the order of punishment passed by the Commandant, dated 08.04.2008, Jharkhand Armed Police-8, Lesliganj, Palamau, whereby the petitioner's increment for two years was seized and the same was treated as three black marks.

2. Sans details, the facts as disclosed and delineated in the writ application, in a nutshell, is that the petitioner is working as Police 587 in G Company at Jharkhand Armed Police, Lesliganj, Palamau. It has been further averred in the writ application that the petitioner was sent on election duty for the bye-election of Jamshedpur constituency held in the year 2008. It has been stated that after the election was over the petitioner went to submit his rifle on 18.08.2007, when it was alleged that the petitioner took 10 extra bullets with the intention to commit theft of the said bullet. It has been further submitted that when the in-

charge pointed out to the petitioner, the petitioner said that out of mistake he had taken extra bullet. It has been further stated on the next day, the petitioner enquired from the in-charge that whether he did communicate to the Commandant about the aforesaid fact, who in turn replied in affirmative and thereafter the petitioner misbehaved with the in-charge. It has been further stated that on the aforesaid facts memo of charge was framed on 8.10.2007 and the petitioner was suspended w.e.f. 30.08.2007 with a direction that he should attend the head quarter of the battalion. The petitioner preferred an appeal against the order of the Commandant, JAP-8, Lesliganj before the D.I.G., JAP, Ranch but the D.I.G. vide its order dated 23.10.2008 has affirmed the order of the Commandant.

Left with no other efficacious, alternative and speedy remedy, the petitioner has been constrained to approach invoking the extraordinary jurisdiction of this Court under article 226 of the Constitution of India for redressal of his grievances.

3. Heard Mr. Prashant Pallav, learned counsel for the petitioner and Mr. Rakesh Kumar Shahi, learned J.C. to A.A.G. for the respondent State.

4. Counter affidavit has been filed on behalf of the respondents, repelling the contentions made in the writ application. It has been inter alia, submitted in the counter affidavit that the allegation against the petitioner is of grave nature that the petitioner had kept 10 (ten) more founds of bullets under his custody while keeping the bullets in his pockets the kot havildar saw him keeping it and asked why is doing so and when he was caught red handed, started pleading for excuse and begged pardon and promised not to do such thing in future. It has been further stated that while he begged pardon the kot havildar did not report it to the senior officer because 10 (ten) rounds of bullets had been recovered from the petitioner, but the next day after election duty while depositing the arms and ammunition's the petitioner asked the kot havildar whether he had reported it to the senior officer and then the kot havildar stated that he had done so. It has been further stated that hearing this, the petitioner became angry and threatened him for dire consequences and asked about his home address from where he belongs and this arrogant behaviour of the petitioner shows the indiscipline and misbehaviour along with revengeful attitude and his action was not at all proper in a disciplined force. It has been further stated that he has threatened to his senior to see him to take revenge and his revengeful attitude shows that the petitioner is an in-disciplined man and therefore, the punishment imposed on him, is according to his misdeeds and it is proper action to keep discipline intact in the police force. It has been further averred that the Conducting Officer has not made him free from the theft of ten Bullets but he has proved that due to the intention of taking away then bullets is the main cause of his behaviour and misdeeds and on the consequence of the bullets theft made the threatening to the kot havildar.

5. Learned counsel for the petitioner has vehemently submitted that the witnesses were examined by the department but none of the witnesses has

supported the case of the respondent and rather there is marked contradiction in their statement which only exposes the falsity of the allegation. Learned counsel for the petitioner has vehemently submitted that in the enquiry proceeding no. 45 of 2007 from the finding of the enquiry officer, it is clear that the allegation against the petitioner regarding taking extra bullet with the intention committing theft was not established and the same will be evident from the order of the Commandant, JAP as well as the appellate authority. Learned counsel for the petitioner has vehemently submitted that the disciplinary authority/commandant has held the petitioner guilty for misbehaving with the in-charge and for the same two years increment of the petitioner was seized by way of punishment which is equivalent to three black marks. Learned counsel for the petitioner has vehemently submitted that the main allegation is disproved but the respondent authority has held the petitioner guilty for the reason best known to them.

6. Per contra, learned J.C. to A.A.G. for the respondent-State has vociferously submitted that the appeal of the petitioner to the DIG, J.A.P. and the facts of the departmental proceeding and other papers relating to the departmental proceeding, the explanations of the delinquent and the findings of the Conducting Officer were examined carefully and after examining the facts found in the proceeding do not reveal any of the fact and point which supports the appeal of the petitioner and the appeal of the petitioner was not accepted in view of keeping the discipline in the battalion. Learned counsel for the Respondent-State has submitted that the Conducting Officer has conducted the proceeding properly and followed each and every norms of conducting the proceeding and he has given ample opportunities to examine and cross-examine the witnesses to the petitioner and he was given opportunity to put his views before the Conducting Officer. Learned counsel for the Respondent-State has further submitted that the witnesses have supported the allegation and the main witness of the event Hav. Nagendra Prasad had fully supported the event, who was the main evidence who had been there at that occasion and Sri Prasad has stated in his statement that while counting 110 round bullets were found in 22 chargers thereafter the accused accepted that by mistake he had taken extra 10 bullets.

7. After hearing the learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has been able to demonstrate foundational facts and law to make out a case for interference due to the reasons stated here in below : -

(i) The order passed by the appellate authority as well as the disciplinary authority is vitiated under the provisions of law as they have imposed major punishment upon the petitioner which was uncalled for in the facts and circumstances of the instant case.

(ii) The petitioner is having unblemished career and he has received several Awards from the department for his sincere service.

(iii) The impugned order of punishment is not commensurate with the proved

misconduct or proved charges and the punishment is excessive and grossly disproportionate to the alleged charges.

The Hon'ble Apex Court in the case of Lucknow Kshetriya Gramin Bank & Anr. v. Rajendra Singh as reported in (2013) 12 SCC 372 in the placitum held as under:

"However, the judicial review of the quantum of punishment is available with a very limited scope. The court would frown upon only when the penalty imposed appears to be so disproportionate to the nature of misconduct that it is shocking to the conscience of the court. Even in such a case when the punishment is set aside as shockingly disproportionate, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case."

(iv) The petitioner was not provided with the enquiry report and the Disciplinary Authority without supplying the copy of the enquiry report awarded punishment to the petitioner and thereby denied the petitioner to file representation against the finding of the Enquiry Officer and as such the impugned order of punishment of dismissal is vitiated in law due to non-observance of the Rule/Principle of natural justice.

The Hon'ble Apex Court in the case of Managing Director ECIL Hyderabad & Others v. B. Karunakar and others as reported in (1993) 4 SCC 727 held as under:

"The denial of supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Article 226 of the Constitution or Section 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to be delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is, thus, a *since qua non* for a valid, fair, just and proper procedure for the delinquent to defend himself effectively and efficaciously.

The proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. The principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The

failure to supply copy thereof to the delinquent would be unfair procedure offending not only Article 14, 21 and 311 (2) of the Constitution, but also, the principles of natural justice."

(v) The petitioner has been punished for no guilt and the punishment imposed upon the petitioner is beyond the charge.

8. On cumulative effect of the facts, reasons and judicial pronouncements, the impugned order dated 23.10.2008 vide memo no. 2118 passed by the D.I.G., Jharkhand Armed Police, Ranchi as well as the order of punishment passed by the Commandant, dated 08.04.2008, Jharkhand Armed Police-8, Lesliganj, Palamau, being not legally sustainable are hereby quashed and set aside. The Commandant Jharkhand Armed Police-8, Lesliganj, Palamau is directed to pass an appropriate order on the quantum of punishment within a period of Eight weeks from the date of receipt/communication of a copy of the order.