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**(2013) 04 JH CK 0094**  
**In the Jharkhand High Court**  
**Case No : W.P. (S) No. 4456 of 2008**

Radhey Shyam Ram

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 26-04-2013

**Acts Referred:**

**Citation :** (2013) 4 AJR 231 : (2013) 2 JLJR 516

**Hon'ble Judges :** S. Chandrashekhar, J

**Bench :** Single Bench

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## Judgement

S. Chandrashekhar, J.—Aggrieved by rejection of his representation by order dated 11.06.2008 passed by the Commandant, Jharkhand Armed Police-4, Bokaro, the petitioner has approached this Court by filing the present writ petition. The brief facts of the case as disclosed in the writ petition is that, the petitioner was appointed as Constable on 22.11.1972. He was promoted to the rank of Havaldar on 10.01.1986 and his name was nominated for the post of Civil Jamadar (Sub-Inspector armed). He earned 45 rewards in his service tenure. No punishment was ever imposed upon him. The petitioner was served a Charge Memo dated 01.08.1995 on the allegation that he had contracted a second marriage with one lady Smt. Piyari Devi without taking permission of the government and he has refused to take care of his first wife and children, who are facing grave financial difficulty. On the basis of a letter written by his wife alleging that the petitioner has refused to give maintenance to her, a show-cause notice was issued to the petitioner and an enquiry was conducted by one Jagarnath Kunwar and a report was submitted on 01.01.1995 which was affirmed by the Deputy Superintendent of police, B.M.P.-4 vide Office Memo dated 15.06.1995 and therefore, a departmental proceeding was initiated against the petitioner.

2. The enquiry officer found the charges proved against the petitioner and the disciplinary authority passed the order of penalty dated 05.02.1996, whereby the petitioner was ordered to be compulsorily retired from service. The petitioner

preferred an appeal before the D.I.G., B.M.P., Southern Zone, which was dismissed on 16.06.1998 and the Memorial preferred by the petitioner was also dismissed by order dated 19.02.1999. The petitioner moved the High Court in C.W.J.C. No. 4985 of 1999 (P). During the proceeding of the said writ petition, Smt. Salabi Devi, the wife of the petitioner was added as party-respondent and she appeared through her counsel and made a statement in the Court that she has been living happily with her husband. In view of the aforesaid fact, the learned Single Judge remanded the matter to the authority for re-consideration of the matter. The representation submitted by the petitioner was rejected by order dated 11.06.2008 and therefore, the petitioner has approached this Court again.

3. A counter-affidavit has been filed on behalf of Respondent No. 4, in which, it has been stated that the wife of the petitioner namely, Smt. Salabi Devi had sent letters complaining mal-treatment by the petitioner. It has further been stated that in the departmental proceeding, the petitioner was afforded reasonable opportunity to defend himself, however, he could not produce any material in his favour. The charges framed against him were found proved and therefore, the order of penalty dated 05.02.1996 was passed against him. In Para 9 of the counter affidavit, it has been stated,

That it is humbly stated and submitted that Smt. Salabi Devi again sent a petition dated 14.06.1995 in two copies through registered post, which was received in the Office on 22.6.1995. She also appeared in the office of the then Commandant, B.M.P.-4, Bokaro on 21.7.1995 and submitted a petition dated 9.7.1995 containing the allegation against her husband Radheshyam Ram - petitioner that her husband refused to give maintenance to her and her children and he had married second time with one Piyari Devi, who frequently used to visit the house of Radheshyam Ram during his leave period. She also requested to save the entire family from destruction and to arrange the sufficient maintenance allowance to her and her minor children.

4. A reply affidavit has also been filed by the petitioner contending that the specific direction of the Hon'ble High Court for re-consideration of the order of punishment, has not been considered by the Respondent No. 4. Reliance has been placed on order dated 15.04.2003 passed in C.W.J.C. No. 1289 of 1999 (R) titled "Rama Shankar Ram Vrs. The State of Bihar", in which a constable facing similar charge was directed to be reinstated in service.

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

6. Ms. Pragati Prasad, learned counsel appearing for the petitioner has submitted that the copy of the alleged enquiry report was not supplied to the petitioner. She has further contended that the petitioner was not afforded an opportunity to produce defence witnesses. The enquiry officer took written statement of some villagers during the course of the alleged departmental enquiry. She has further submitted that the report, which would entail civil consequences, cannot be

prepared in such an arbitrary manner. The wife of the petitioner herself has changed her stand and appeared before this Court and made a statement that she has been living happily with her husband. Merely because few persons made statement or expressed suspicion that the petitioner had contracted second marriage, the enquiry officer could not have arrived at a conclusive finding that the petitioner had in fact married the said Piyari Devi.

7. On the other hand, Ms. Shivani Verma, learned counsel appearing for the Respondents has vehemently opposed the prayer in the writ petition. She has drawn attention of the Court to Rule 707 of the Jharkhand Police Manual and contended that no interference is required by this Court in this matter, particularly because the enquiry was conducted in a fair manner and the misconduct alleged against the petitioner has been found proved.

8. A perusal of the documents on record discloses that initially the wife of the petitioner expressed her suspicion that "probably" her husband had contracted a second marriage. She had expressed her apprehension, mainly because the petitioner was not providing financial support to his family and the said Piyari Devi used to visit her house whenever the petitioner visited home during leave. However, the petitioner has raised a plea that in view of the mental condition and behavior of his wife, who had even once tried to poison his elder son, the petitioner had stopped giving money to his wife directly and he had started sending money order in the name of his son. It is also stated that the petitioner had kept the said Piyari Devi to look after his old mother and children. The petitioner has filed money order receipts since the year 1989-90. It also appears that an enquiry was conducted behind the back of the petitioner and a report dated 01.01.1995 was submitted stating that the petitioner has married another lady namely, Piyari Devi without taking permission from the government. During the departmental enquiry, the conducting officer asked the petitioner vide Memo No. 159 dated 21.09.2005 to submit his last show-cause reply. It also appears from the record of the case that a copy of the enquiry report was not supplied to the petitioner before the show-cause notice was issued on 16.01.1996 to the petitioner against the proposed penalty order. It is thus apparent that the disciplinary authority had already made up his mind without affording an opportunity to the petitioner to submit his reply to the enquiry report and thus without considering the probable objection of the petitioner, which he could have raised to the findings recorded in the enquiry report, straightway the second show-cause notice was issued to the petitioner. Neither the copy of the enquiry report has been brought on record nor the date of the enquiry report has been disclosed by the Respondents.

9. The petitioner, a poor and almost an illiterate person, has taken a plea that no effort was taken by the enquiry officer or disciplinary authority to ascertain the real fact of the matter. Merely on the basis of some statement allegedly made by some co-villagers, it has been concluded that the petitioner has contracted a second marriage. It appears from the impugned order dated 11.06.2008 that the

wife of the petitioner was not called again by the Respondent No. 4 as ordered by this Court by order dated 23.04.2008 and in the counter affidavit, it has been simply stated that since the wife of the petitioner had already appeared earlier, it was not required to call the wife of the petitioner again for recording her statement. The petitioner took a specific plea that another delinquent officer, namely Rama Shankar Ram, who was also charged for similar mis-conduct, was ordered reinstatement by this Court by order dated 15.04.2003. In the order dated 23.04.2008, this Court took note of the order passed in C.W.J.C. No. 1289 of 1999 (R) titled "Rama Shankar Ram Vrs. The State of Bihar" and it appears that in view of the peculiar facts and circumstances of the case, this Court remanded the matter for re-consideration and it was specifically indicated that the petitioner may be reinstated in service on specific terms and conditions. Though, the said Rama Shankar Ram was not proceeded in the same departmental enquiry, as both have been charged for their individual mis-conduct, however, there is some substance in the contention of the petitioner that he has been discriminated by the authorities in so far as he was neither granted any back wages nor reinstated in service.

10. It is not in dispute that the wife of the petitioner wrote letters on the basis of which an enquiry was initiated. It is also not in dispute that the wife of the petitioner herself has made statement in the Court that she has been living happily with her husband. After the remand, the Respondent No. 4 did not take any effort to record the statement of either Piyari Devi or Salabi Devi. The Respondent No. 4 has also failed to take note of the fact that this Court by order dated 23.04.2008 had expressed its opinion that the order of punishment can be re-considered by the authority. It was also observed by this Court that other suitable punishment with reasonable conditions could have been considered by the authorities. This aspect of the matter has not been properly appreciated by the Respondent No. 4. The order of the Court even though couched in most gentle words, cannot be ignored by any authority, administrative or judicial. The petitioner, who served for more than 24 years and earned 45 rewards could not have been treated in such a casual manner and awarded an order of compulsory retirement which definitely would have serious financial repercussions. The finding of the enquiry officer is primarily based on the alleged admission of guilt by the delinquent, however, it is not supported by any statement of the delinquent in writing. Nothing has been brought on record by the respondents to prove conclusively that the petitioner married a second time.

11. In *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Hon"ble Supreme Court has held that the evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be substitute of evidence.

12. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court has held,

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

13. In view of the peculiar facts and circumstances of this case, I am of a considered opinion that the Respondent No. 4 has failed to consider the case of the petitioner in the light of order dated 23.04.2008. No reason has been assigned by the Respondent No. 4 why a similar relief cannot be given to the petitioner as was given to the said Rama Shankar Ram. A further interaction with the wife of the petitioner could have cleared many doubts and suspicions, which have shrouded this case. The impugned order dated 11.06.2008 cannot be sustained in law and therefore, it is quashed. Had the petitioner been reinstated in service pursuant to order dated 23.04.2008, even though no back wages were given to him for the intervening period prior to 23.04.2008, he would have received his salary, allowances, etc. after 23.04.2008 till his superannuation from service.

14. As, more than 17 years have passed since the penalty order dated 05.02.1996 was passed and the petitioner would have superannuated from service in the year 2011, no fruitful purpose would be served by remanding the matter for a fresh consideration. In view of the peculiar facts and circumstances of the case, I am of the view that it would meet the ends of justice if the petitioner is granted 50% of back wages however, without any interest, for the period between 23.04.2008 and February, 2011 that is, when the petitioner would have superannuated from service. The present writ petition is disposed of in the aforesaid terms.