
(2013) 07 JH CK 0194
In the Jharkhand High Court
Case No : WP (S) No. 6892 of 2012

Rajiv Kumar Ranjan

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 3 JLJR 561

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Mrinal Kanti Roy, for the Appellant; Praveen Kumar Rana for the State, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court with the following prayers:-- (i) For quashing the order issued by the Superintendent of Police, Railway, Jamshedpur vide memo No. 547 dated 24.9.2005, whereby the charges levelled against the petitioner stand proved and the petitioner has been awarded the punishment of dismissal from service.

(ii) For quashing the appellate order issued by the Director General of Police, Railway, Jharkhand, Ranchi vide memo No. 118 dated 16.7.2012, whereby the order of punishment awarded to the petitioner has been confirmed.

The brief facts of the case are that, a charge-memo was given to the petitioner on 3.8.2002 on the allegation that he boarded a different bogie of the train in complete disregard to the official command given to him and he extorted money from two businessmen. An enquiry was conducted and the enquiry report was submitted on 9.11.2004. By order dated 24.9.2005, an order of dismissal from service was passed by the disciplinary authority which has been affirmed by the appellate authority by order dated 16.7.2012. A criminal case was also instituted however, vide judgment and order dated 2.5.2008, the petitioner and other co-accused namely, Jay Mangal Prasad Mandal have not been found guilty. 2. A counter-affidavit has been filed by the respondents stating therein that the

charges levelled against the petitioner are very serious and after a property conducted departmental enquiry, the charges have been found proved. Another co-accused namely, Jay Mangal Prasad Mandal had earlier approached this Court in W.P.(S) No. 7662 of 2011, challenging the order of his dismissal from service and the said writ petition was dismissed by order dated 18.9.2012. In these facts, the respondents have resisted the prayer of the petitioner.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has raised a plea that the enquiry report does not indicate whether any evidence was taken and considered by the enquiry officer and whether the plea of the defence have been considered by the enquiry officer. He has further submitted that even the order of penalty dated 24.9.2005 and the appellate order dated 16.7.2012, do not disclose any application of mind and definitely there is no discussion about the materials on record and the defence taken by the petitioner.

5. Learned counsel appearing for the respondents reiterated the stand taken in the counter-affidavit and submitted that in view of the dismissal of W.P.(S) No. 7662 of 2011, the present writ petition lacks merit and deserves to be dismissed.

6. A perusal of the enquiry report dated 9.11.2004, which is a one page report, clearly indicates that there is no discussion with respect to the evidence, if any, brought on record. It does not appear from the enquiry report, what was the defence of the petitioner. The enquiry report (Annexure-2) is a cryptic and non-speaking report. The order of penalty dated 24.9.2005 and the appellate order dated 16.7.2012 are cryptic and do not disclose any reason.

7. In " Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, , the Hon"ble Supreme Court has observed 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 a substitute of evidence.

8. In " M.V. Bijlani Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court has held:--

25. ...Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

9. In view of the aforesaid, I am of the opinion that the enquiry against the petitioner was improper. The enquiry report being a non-speaking report does not satisfy the requirement in law.

10. Accordingly, the present petition is allowed. The impugned orders are quashed. The respondents are directed to conduct a fresh enquiry after giving reasonable opportunity to the petitioner. The enquiry may be concluded within a period of eight weeks from the date a certified copy of this order is produced. The writ petition is disposed of.