
(2010) 11 JH CK 0053
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2012 of 2005

Ram Kishore Roy

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-11-2010

Acts Referred:

Citation : (2011) 1 JCR 391 : (2011) 1 JLJR 396

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C.S. Rawat, J.—The Petitioner has filed writ petition for seeking the following reliefs:

(I) For Issuance of writ/order or direction in the nature of certiorary for quashing the order dated 21.2.2004 contained in Annexure-4 passed by the Disciplinary Authority, the Respondent No. 4 and the order dated 26.7.2004 contained in Annexure-5 passed by Respondent No. 3, the Appellate Authority.

(II) For issuance of writ In the nature of mandamus commanding the Respondents to pay the salary of the period:

(i) 1.3.2003 to 20.3.2003, 20 days

(ii) 21.3.2003 to 8.9.2003, 172 days

(iii) 9.9.2003 to 27.9.2003, 19 days

(iv) 28.9.2003 to 18.11.2003, 52 days (Salary of Suspension period i.e. half salary of 26 days)

2. The Petitioner was posted as an Assistant Sub-Inspector of Police in district Jamshedpur and he was transferred from Sunder Nagar Police Station of Jamshedpur to Palamau. He did not joint the new place of posting and remained absent for a period of 172 days and joined on 9.9.2003 and the charges were

framed against him for remaining absent from the duty and show-cause notice was issued. Thereafter, a departmental enquiry was held. The enquiry officer after taking the reply of the delinquent officer as well as the evidences on record, found him not guilty and he exonerated the Petitioner from the charges.

3. The Disciplinary Authority did not agree with the findings of Enquiry Officer and held that the Petitioner is guilty and awarded punishment outrightly by withholding the salary of 18 months which was equivalent to three black marks and the period of absence was to be treated as no work no pay.

4. The Petitioner thereafter preferred an appeal against the order of Disciplinary Authority and the same was rejected. There is no dispute about the above facts among the parties.

5. Learned Counsel appearing for the Petitioner contended that the Disciplinary Authority differed with the findings of the Enquiry Officer and he awarded the punishment without giving him an opportunity. He further pointed out that it is always open to the Disciplinary Authority to differ from the findings of the Enquiry Officer and he can substitute his own findings on record and thereafter a show-cause notice had to be Issued to the delinquent officer after service of the notice and considering the reply of the delinquent officer, the Disciplinary Authority can pass a suitable order. It was further pointed out that in this case, the Disciplinary Authority had not taken the recourse to above requirement of law, so the order is bad in law.

6. Learned Counsel appearing for the State refuted the contention.

7. I am completely in agreement with the submissions of the learned Counsel for the Petitioner. The Petitioner was punished outrightly without giving any opportunity. Thus the punishment order passed by the Disciplinary Authority is liable to be set-aside.

8. The Petitioner has also prayed for the payment of subsistence allowance for the period of suspension but learned Counsel for the State could not demonstrate that this fact has been denied by the State, so he is entitled for the same.

9. However, it is directed that if the Disciplinary Authority if desires so, he may proceed against the delinquent official from the stage from where he started the appreciation of the report of Enquiry Officer and thereafter he can pass a suitable order in the light of the observation made above.

10. The writ petition is allowed. The Respondents are directed to pay the subsistence allowance as claimed in the writ petition expeditiously preferably within a period of four months. The writ petition is disposed off accordingly. No order as to costs. Petition allowed.