
(2013) 03 JH CK 0099
In the Jharkhand High Court
Case No : WP (S) No. 5149 of 2005

Rama Shankar Ram

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 JLJR 530

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rajendra Krishna, for the Appellant; Saket Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The petitioner has challenged order dated 28.8.2004 passed by the disciplinary authority and order dated 3.12.2004 passed by the appellate authority affirming the order of dismissal from service. The petitioner while posted at Hazaribagh proceeded on compensatory leave from 3.1.2004 to 15.1.2004. During that period his son-in-law went missing and in the meantime, his brother-in-law also died. The petitioner intimated the Commandant through registered letter sent on 22.1.2004. The petitioner reported for duty on 13.3.2004. A departmental proceeding was initiated against the petitioner and charge-memo was served upon the petitioner on 26.3.2004. Two charges namely, (i) unauthorised absence from duty for 57 days, and, (ii) overstaying on 28 occasions were framed against the petitioner. On conclusion of the proceeding, enquiry report was submitted on 12.7.2004 recommending that in view of the abscondence of the son-in-law and death of the brother-in-law of the petitioner, the departmental proceeding may be closed after issuing warning to the petitioner. The petitioner was supplied a copy of the enquiry report and he submitted his reply on 22.9.2004 reiterating his stand taken before the enquiry officer. The disciplinary authority on consideration of the enquiry report and past

misconduct of the petitioner, passed the order of penalty whereby annual increment for one year was forfeited and a warning was issued to the petitioner that in future if any misconduct is proved, no punishment less than the dismissal from service would be inflicted upon him. The petitioner presented his appeal before the Deputy Inspector General of Police which was dismissed on 3.12.2004.

2. Heard learned counsel for the parties and perused the documents on record. The learned counsel for the petitioner has contended that the petitioner could not join duty due to unfortunate incidents in which his son-in-law went missing and brother-in-law had died. The reasons were beyond the control of the petitioner and the absence from duty was not willful and therefore, the recommendation of the enquiry officer should have been accepted by the disciplinary authority and the proceeding should have been closed by issuing warning to the petitioner. The learned counsel for the respondents has justified the orders passed against the petitioner.

3. A perusal of the documents on record discloses that the past misconduct of the petitioner has been enumerated in the charge-memo issued to the petitioner and the previous misconducts have been taken into account by the disciplinary authority while disagreeing with the final conclusion of the enquiry officer. The enquiry officer, it appears, failed to notice the past Incidents of misconduct whereunder the petitioner was awarded 11 minor punishments and two major punishments, I also find that on 28 occasions, the petitioner has overstayed and on one occasion he absconded During the enquiry the petitioner refused to plead his case. The petitioner has admitted the charges levelled against him and the only plea taken by the petitioner is that due to reasons beyond his control he could not join his duties. I am of the opinion that in view of the past proved misconduct of the petitioner, the order passed by the disciplinary authority is just and proper and it does not require any interference by this Court.

4. The Hon''ble Supreme Court in State of Andhra Pradesh Vs. Sree Rama Rao, has held that High Court has no power under Article 226 to interfere with the finding of misconduct recorded during the departmental enquiry. The High Court in a petition for a writ under Article 226 of the Constitution cannot review the evidence.

5. In " State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, , the Hon''ble Supreme Court has held that the High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against the public servant. Taking note of the judgment of the Hon''ble Supreme Court in State of Andhra Pradesh Vs. Sree Rama Rao, , the Hon''ble Supreme Court has observed as under:--

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of Andhra Pradesh Vs. Sree Rama Rao, First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him,

the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

6. This is not a case in which the petitioner can contend that the disciplinary authority has ignored some relevant material and thus, arrived at a wrong conclusion. This is also not a case in which it can be said that the conclusion arrived at in the disciplinary proceeding is perverse. During the enquiry the petitioner was afforded reasonable opportunity to defend himself however, he himself refused to plead his case. Absence from duty is admitted by the petitioner and his past misconduct is also a matter of record. It was open to the Disciplinary Authority to take into account the past misconduct of the petitioner, particularly when a charge was framed in this regard. In view of the aforesaid discussion, I find (sic) to interfere with the impugned orders passed against the petitioner. Accordingly, the writ petition is dismissed.