

(2011) 07 JH CK 0073
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2716 of 2008

Rani Anugrh Prasad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 14
Penal Code, 1860 (IPC) — Section 379

Citation : (2011) 4 JCR 93

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mrs. Poonam Srivastav, J.—Heard learned counsel for the petitioner and also the counsel appearing on behalf of the Union of India.

2. The instant writ petition is preferred challenging the order dated 4th February, 2008 as well as the appellate order dated 11th April, 2008, Annexures 1 and 2 respectively to this writ petition. The order of dismissal from service is with disqualification for future employment under the Government.

3. The petitioner was appointed on 12th October, 1984 under CISF and posted at Visakhapatnam since 1985 to June, 1981. Thereafter he was posted at E.C.L. Sheetalpur from June, 1995 to 1997 and finally at B.C.C.L. Dhanbad. At the time when the petitioner was charge-sheeted, he was posted under the H.E.C., Unit Dhurwa, Ranchi as Head Constable C.I.S.F. It is further contended that he has received 36 reward for his good service.

4. The allegation against the petitioner is that on 25th May, 2007 at about 8.30 p.m., he was apprehended while entering into 063 Store of H.M.B.P., with an intention to commit theft. Information was received and he was arrested. First information report was registered and a departmental proceeding was also initiated. Final order of dismissal was passed against him which has been

confirmed in appeal.

5. The arguments of the petitioner are many fold. His first argument is that in another case regarding another employee who was also apprehended on the charge of theft, was charge-sheeted on 9th April, 2009, but he was awarded punishment of compulsory retirement only, whereas the petitioner was served with charge-sheet on 4th February, 2008 and consequent to the departmental proceeding, he has been awarded punishment of dismissal from service and, therefore, the petitioner is discriminated.

6. The next argument is that the relevant witnesses have not been examined and, therefore, it has caused prejudice to the petitioner. It is also submitted that the Enquiry Officer was biased. The explanation given by the petitioner that he had gone to meet one R. Singh, who had borrowed some money from the petitioner and on his asking, he had gone to collect money from him, but despite his request. Shri R. Singh was not examined as a witness.

7. The next grievance of the petitioner is that during course of enquiry, copy of statement of charge was not furnished and, therefore, he was not able to give appropriate reply, and ultimately, the enquiry was concluded. Last but not the least, the submission of the petitioner is that the punishment awarded is disproportionate to the act of delinquency and, therefore, it is liable to be reduced.

8. Counsel appearing on behalf of the Union of India has tried to place the entire appellate order. His contention is that every aspect has been taken into consideration. The order has been placed by the counsel appearing on behalf of the Union of India.

9. The learned counsel has cited a number of decisions of the Apex Court which relates to the question of quantum of punishment awarded was disproportionate. The citations are State of Uttar Pradesh and Others Vs. Ram Daras Yadav, ; Angad Das Vs. Union of India (UOI) and Others, ; State of M.P. and Others v. Hazarilal, 2008 LAB. (sic) 1102 and Bhagat Ram Vs. State of Himachal Pradesh and Others, . In all these decisions, the ratio decided is that since the Enquiry Officer was not able to examine the veracity of the allegation of the respondents, and in absence of definite conclusion, the punishment of dismissal awarded was held to be disproportionate and instead of dismissal, two increments were withheld and the respondents were reinstated in service. In fact this order of disproportionate punishment was given by the High Court of Allahabad and the said order was challenged in the Supreme Court and the Supreme Court has accepted the verdict of High Court awarding lesser punishment.

10. Counsel for the petitioner relied on paragraph 15 of Bhagat Ram (supra) which reads as under:--

The question is once we quash the order, is it open to us to give any direction which would not permit a fresh inquiry to be held? After all what is the purpose

of holding a fresh inquiry? Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 or the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh inquiry. What option is open to-us in exercise of our jurisdiction under Art. 136 to make an appropriate demand that we make an order of minor penalty here and now without being unduly technical apart (about?) jurisdiction. We are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increment with further effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement.

11. After going through the entire facts and circumstances and the argument, the question of discrimination in violation of Article 14 of the Constitution cannot be said to be unsatisfactory. Since the petitioner's counsel has tried to assail the punishment awarded in respect of the another enquiry conducted in the year 2009, whereas the instant enquiry relates to the enquiry of 2008, may be similar set of allegation. I am not in agreement with the argument on behalf of the petitioner even if there may be some similarity in the allegation in two different enquiries. It is not a case where the same set of witnesses were examined, the nature of evidence was identical, evidently the Enquiry Officer was different, the Disciplinary Authority and the Appellate Authority had altogether different set of facts and the evidence while passing the order of punishment and, therefore, the argument that the petitioner is entitled for the same punishment is not appreciable. One enquiry that took place in the year 2008, the other one in the year 2009 pit a different place of occurrence, therefore, the argument that a common yardstick should have been made applicable is far from consideration. It cannot be said there was any discrimination between the two delinquent employees and thereby violation of Article 14. There may be some similarity but the two inquiries cannot be equated on a common platform. Thus the arguments have no substance.

12. So far the question of examination of relevant witnesses and non-examination of R. Singh as well as non-supply of copy of statement is concerned,

the Appellate Authority has taken into consideration each and every aspect of the matter and the objection raised in the appeal, therefore, I am of the view that the objection raised in the instant writ petition is without any basis. The objections raised by the petitioner is well considered at the appellate stage and the order does not call for any interference. The Enquiry Officer has not been arrayed as party by name or no specific allegation of bias has been levelled against him and, therefore, the argument regarding bias of the Enquiry Officer is beyond the scope of consideration.

13. The question of disproportionate punishment is also not applicable in the facts and circumstances of the case. Allegation of theft was levelled against the petitioner but even assuming that the petitioner may Or may not have been convicted u/s 379 of the Indian Penal Code. The employee who is working as constable in the C.I.S.F. cannot be continued in service since there is specific allegation of theft and he was apprehended on the spot. The explanation given by the petitioner is also half-hearted and not accepted either by the Enquiry Officer or the Disciplinary Authority.

14. The writ petition lacks merit and it is, accordingly, dismissed. However, no costs.