

(2015) 02 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3574 of 2006

Ranjit Kumar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Constitution of India, 1950 — Article 20(2), 226

Citation : (2015) 02 JH CK 0020

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : Prakash Kishore Prasad, for the Appellant; Rajiv Sinha, ASG I, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J.—This writ petition has been filed for quashing:-

(i) The order dated 05.02.2002 (Annexure - 2) by which the punishment of lowering the petitioner in the lower stages of pay Scale of Rs. 3050-75-3950-80-4590 for a period of five years with immediate effect has been inflicted. With a further direction that he will not earned any increment in the scale for the said period and after conclusion of the said period, it will also affect the future increment.

(ii) The order dated 14.10.2004 passed by the appellate authority (Annexure - 5) by which the order dated 11.12.2001 has been affirmed.

(iii) For quashing the revisional order dated 21.03.2005 (Annexure - 5) by which the orders passed by the appellate authority has been affirmed.

2. Heard the parties and perused the documents on record.

3. The brief facts of the case is that the petitioner was served with a charge sheet dated 09.10.2001 issued under the signature of the Commandant. In the memorandum of charge, two charges were levelled against the petitioner. The

first was absence from the duties for 81 days with effect from 03.05.2001 without prior permission of the competent authority. Charge No. 2 relates to misconduct, indiscipline and overstay of leave resulting into 12 different punishments already inflicted upon the petitioner.

4. The petitioner after receiving memorandum of charge had put his appearance before the Enquiry Officer and filed his defence reply stating inter alia therein that the charge No. (ii) cannot be said to be a charge because all the 12 previous occasions, the petitioner has already been inflicted punishment. When the petitioner has already been inflicted the punishment over 12 those occasions that cannot be said to be a charge.

5. So far as, the charge No. 1 i.e. of unauthorizedly absence for a period of 81 days, he had made an application for leave and had also made another application that in case the leave is not granted, he may be treated resigned from service for which permission has sought for. The submission has been made that due to intense family dispute relating to partition of ancestral properties, the petitioner had attended the same after making application aforesaid. Thus, it has been submitted that the charge No. (i) is also not a charge because he had taken serious efforts for sanction of leave but the authority has not taken into consideration the ground of leave.

6. The enquiry officer has submitted his findings where the charge has been found to be true against the petitioner. Thereafter the enquiry report was submitted before the disciplinary authority, who had issued second show cause notice inviting a reply of the petitioner with respect to the finding of the enquiry officer. The petitioner has, accordingly, submitted his reply, the disciplinary authority has not found the reply satisfactory.

7. The disciplinary authority thereafter by impugned order dated 05.02.2002 inflicted the punishment of lowest pay scale for a period of five years with a further direction not to earn annual increment for the said period which will also affect the future increment. The petitioner had preferred an appeal as also revision but the reply of the petitioner has neither been considered either by the appellate authority or by the revisional authority and the order has been confirmed by them.

8. The petitioner being aggrieved with the impugned order had filed a writ petition on the grounds: - (i) that so far as the charge No. (ii) is concerned, the same cannot be said to be a charge otherwise the same would be hit by the principles of double jeopardy as enshrined under Article 20(2) of the Constitution of India, (ii) the discipline authority although has issued second show cause notice but without any proposed punishment and as such the petitioner could not able to know that what exactly going on in the mind of the discipline authority regarding the quantum of punishment.

9. The further submission of the learned counsel for the petitioner is that the second show cause notice was issued on 11.12.2001 by which the petitioner was

directed to give reply within fifteen days. But that was merely a formality because the disciplinary authority had already made his mind as would be evident from the observation made by the disciplinary authority in the order dated 05.02.2002.

10. On the other hand, the respondents has contended the case by way of filing a counter affidavit and has submitted that the petitioner being a member of disciplined force and has left the office without any prior intimation/information to the higher authority which is misconduct. The further submission has been made that on previous occasion also i.e. on 12 times, the petitioner has been inflicted with punishment for the offences of the similar nature but petitioner has not reformed himself and again repeated the same thing and as such the respondents-Central Industrial Security Force, having no option but has to take action against the petitioner and, accordingly memorandum of charge had been issued to him for instituting a regular departmental proceedings.

11. Further submission has been made that the petitioner has been provided adequate opportunity to defend his case before the enquiry officer. The petitioner has also been provided the opportunity to give reply against the finding of the inquiry officer by way of reply to second show cause notice which was well considered by the disciplinary authority and, thereafter, the order of punishment has been passed.

12. The petitioner had preferred an appeal and revision and both the appellate and revisional authority have upheld the order of disciplinary authority concurred with the finding given by the disciplinary authority. Thus, the submission has been made that there are three concurrent findings of the authorities and as such this Court under Article 226 cannot reappreciate the facts given by the disciplinary authority or by the enquiry officer.

13. The further submission has been made that the respondents have taken a lenient view in imposing lesser punishment of only reducing the pay scale of the petitioner and as such submission has been made that there is no need to interfere in the impugned order.

14. After having heard the parties at length and perused the documents on records, I find that the petitioner admittedly was a member of disciplined force. The petitioner had made an application for leave and admittedly which was not sanctioned but the petitioner left the office, thereafter, remained absent for a period of 81 days.

The contention of the petitioner is that he has taken serious efforts for the grant of leave for the valid reason but that was not considered and thereby the leave was not been granted.

This contention cannot be accepted because of the reason, the petitioner after making an application for seeking permission to leave the office and when it was not accepted the petitioner being a member of the disciplined force was not

supposed to left the office.

15. The learned counsel for the petitioner has contended that there was absence of about 81 days from the office and as such lowest pay scale is very serious punishment.

But this contention of the petitioner is also not justified because the period is not material either it is one day or 81 days. The conduct of the employee is to be seen. The conduct is that the petitioner being a public servant and being a member of disciplined force has left the office without any intimation which is misconduct and on that ground the charge has been framed for absence of a period of 81 days.

So far as the second contention of the learned counsel for the petitioner that on earlier 12 occasions the punishment order has also been passed the same cannot be a charge otherwise the same hit by the principle of double jeopardy as enshrined in Article 20(2) of the Constitution of India which also seems not justified because of the reason that the petitioner has earlier been punished on 12 occasions of the similar nature of allegations with the anticipation that the petitioner will reform himself but the same has been repeated.

16. Principle of double jeopardy will govern the criminal proceedings and not the departmental proceedings because if an employee commits misconduct time and again and if the employer did not want to keep that employee in service that will be a ground for taking action against the said delinquent employee by way of initiating a departmental proceedings.

In that view of the matter, the principle of double jeopardy will not govern the case of the petitioner.

17. From perusal of the entire records and after hearing the contention of the learned counsel for the petitioner it is not the case of the petitioner that he was declined opportunities of hearing rather the case of the petitioner is that merely on the grounds of 81 days the order of punishment is not sustainable but the same cannot be accepted in view the discussion made hereinabove.

18. The petitioner has been given adequate opportunity before the enquiry officer. Disciplinary authority had issued second show cause notice after accepting the finding of the enquiry officer. After dissatisfied with the reply given by the petitioner in the second show cause notice the disciplinary authority has exercised a power conferred under the Procedure of C.I.S.F. as contained in the Rule 32 of the C.I.S.F. 2001 and, accordingly, inflicted punishment as enshrined in 34(5) of C.I.S.F. Rules 2001.

19. So far as the contention of the learned counsel for the petitioner that the second show cause notice does not contain the proposed punishment and as such the proceeding will be vitiated, that cannot be accepted in view of the fact that the petitioner was knowing the facts that the disciplinary proceeding was initiated under the provisions of Rule 32 of the C.I.S.F. Rules 2001 and it relates

to major punishment.

20. The entire proceedings cannot be vitiated due to the reason that the petitioner has given reply and after taking into consideration the disciplinary authority had passed the impugned order of punishment. The petitioner had preferred an appeal and revision and both authorities after elaborate discussions has found the guilty of the petitioner by upholding the order of disciplinary authority.

21. Rule is well settled in that if the authorities have given findings on the basis of the evidence then the same cannot be disturbed or reversed by the High Court under Article 226 of the Constitution of India.

22. In this regard judgment rendered by the Hon''ble Apex Court in case of State of U.P. and Others Vs. Raj Kishore Yadav and Another, is worth quoting. At Paragraph - 4 the Hon''ble Apex Court held as follows:-

"..... It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed." 23. Applying the judgment referred hereinabove, I find no reasons to interfere in the impugned order. Accordingly, the writ petition is, accordingly, dismissed.