
(2009) 05 JH CK 0109
In the Jharkhand High Court

Sanjay Khalkho

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2011) 3 JCR 143

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application is to the order dated 14.11.2003 (Annexure-4) passed by the respondent No. 5 whereby the petitioner was discharged from the post of Police Constable and also to the order dated 26.06.2004 (Annexure-5) of the appellate authority namely the Deputy Inspector General of Police, Kolhan Range, Chaibasa whereby the petitioner's appeal against the order of his dismissal was dismissed and also to the order dated 28.09.2007 (Annexure-6) passed in the petitioner's Memorial Appeal by the Director General-cum-I.G. of Police, Jharkhand. Praying for an order to quash the aforementioned impugned orders, the petitioner has also prayed for an order/direction to the concerned respondents, as may be deemed appropriate under the law.

2. Earlier, against the order of his discharge passed in the departmental proceeding, the petitioner had preferred a writ application before this Court vide W.P.(S) No. 2200 of 2004. While disposing of the writ application, this Court had directed the appellate authority to dispose of the petitioner's appeal filed against the order of his discharge, within a period of three months. Against the impugned order of the appellate authority the petitioner had filed another writ application before this Court vide W.P.(S) No. 4386 of 2004. By order dated 06.04.2007, a Bench of this Court had permitted the petitioner to withdraw the writ application with liberty to prefer a Memorial Appeal before the competent authority. His Memorial Appeal having been dismissed by the impugned order (Annexure-6), the petitioner has filed this writ application against not only the

order of dismissal of his Memorial Appeal but also against the earlier orders both of his discharge from service and the order dismissing his appeal against the order of discharge.

3. The petitioner's case in brief is that he was appointed as Police Constable under the State Police Service on 26.07.1994 and was posted in the district of Chaibasa. After obtaining his training from the Police Training School, Nathnagar, he was posted in the district of Deoghar and occasionally on deputation at Chakradharpur within the district of Singhbhum.

During his posting at Deoghar, a departmental proceeding was initiated against him by the Superintendent of Police, Chaibasa on 18.06.2002 on the charge that he had contracted a second marriage with another lady during the life time of his first wife without taking permission from the department, such act, being in violation of the Government Servants Conduct Rules. Denying the charge, the petitioner had contested the departmental proceeding claiming that he had never married any other lady during the life time of his legally married wife who is living with him. He had also denied to have any connection whatsoever with the other lady, namely Anukanta Kerketta and that his wife Poonam Khalkho had lodged a false complaint against him only due to her grievance that he was not looking after her and her children and was inflicting torture upon them. Later, on realizing her fault, she had submitted her written declaration before the Superintendent of Police, Chaibasa that she had leveled false allegations against her husband on account of domestic quarrels and that her husband had never married the other lady.

The grievance of the petitioner is that though it is claimed that the enquiry into the complaint against the petitioner's illegal second marriage was conducted by the Dy. S.P., Chaibasa namely Smt. Sandhya Rani Mehta and had submitted her report of enquiry but at the departmental proceeding she was not examined nor was the petitioner afforded any opportunity of cross examining her. Furthermore, the complainant namely the petitioner's wife Poonam Khalkho was also not examined at the departmental proceeding and neither was the petitioner afforded any opportunity of cross examining her. The other lady namely Anukanta Kerketta, with whom the petitioner is alleged to have contracted second marriage, has also not been examined in the departmental proceeding.

4. Sri S.P.Roy, learned Counsel for the petitioner would submit that by the failure of the enquiry officer to examine the material witnesses to afford opportunity to the petitioner to cross examine them and on the other hand, placing implicit reliance on the ex-parte enquiry report submitted by the Dy. S.P., the departmental proceeding was conducted in a most arbitrary manner and the findings recorded by the enquiry officer was therefore, perverse, illegal and against the principles of natural justice. Learned Counsel contends that the subsequent letter of the petitioner's wife, on whose initial complaint the departmental proceeding was initiated, had herself submitted her denial of the allegations even during the pendency of the departmental proceeding and such

denial ought to have been considered by the enquiry officer. The manner in which the departmental proceeding was conducted, has caused serious prejudice to the petitioner in his defence. Learned Counsel adds further that the petitioner was not furnished with the copy of the report of the enquiry officer and the findings recorded therein and this fact was categorically stated in the Memorial Appeal filed by the petitioner and also before the appellate authority.

Learned Counsel adds further that in addition to the impugned order of discharge, the Superintendent of Police Chaibasa (Respondent No. 5) had also ordered to deduct a sum of Rs. 1,965/- from the salary of the petitioner, to be given to the petitioner's wife Poonam Khalkho for her maintenance even though, the allegation of the petitioner's second marriage was not established.

Learned Counsel contends that the appellate authority has merely accepted the report of the enquiry officer and dismissed the petitioner's appeal without application of mind and as such, the impugned order of the appellate authority is also illegal, perverse and against the principles of natural justice. Learned Counsel submits that for the same reason, the impugned order of the superior authority in the Memorial Appeal filed by the petitioner, is also illegal, arbitrary and against the principles of natural justice.

5. In the counter affidavit filed on behalf of the respondents, a preliminary objection has been taken on the ground that for the same relief, the petitioner had earlier approached this Court and while the first writ application was dismissed, the petitioner had himself withdrawn the second writ application and therefore, the instant writ application is not maintainable on the ground of resjudicata. This objection is not tenable in view of the fact that the earlier writ application was dismissed on the ground that since the petitioner had already preferred appeal before the appellate authority against the impugned order of his discharge, he should wait for the appellate authority's final orders. The second writ application was withdrawn with a liberty to the petitioner to prefer Memorial Appeal before the appropriate authority. Thus, on the issue relating to the illegality of the impugned order of discharge and the impugned order of dismissal of appeal as also the impugned order of dismissal of the Memorial Appeal, no adjudication was made by this Court in any of the earlier writ applications.

6. As regards the merits of the case, the stand taken by the respondent is that the departmental enquiry was conducted in presence of the petitioner after obtaining his replies to the initial show cause notice and his written arguments in defence. The material witnesses including the petitioner's wife were examined. The report in respect of the earlier enquiry conducted by the Dy. S.P., into the previous complaint of the petitioner's wife was also produced and adduced in evidence. At the conclusion of the departmental enquiry, the petitioner was given a second show cause notice to which he had submitted his replies and after considering all the aspects and the evidences on record, the disciplinary authority had taken its decision to award the punishment of dismissal from service.

It is further explained that it is incorrect to say that the appellate authority had not considered the grounds of appeal or that it had not discussed the findings recorded by the enquiry officer. Infact the appellate authority had considered the charges framed against the petitioner, the evidences adduced on record and the findings of the enquiry officer and being satisfied with the reasons assigned by the disciplinary authority for awarding the punishment, had dismissed the appeal. Likewise, the authority before whom the Memorial Appeal was filed by the petitioner, had also considered elaborately the entire factual aspects of the case, the findings recorded by the enquiry officer and all relevant aspects and only thereafter, had dismissed the Memorial Appeal of the petitioner. It is further explained that the purported subsequent letter of the petitioner's wife, though claimed by the petitioner to have been submitted on 22.09.2003 i.e. prior to the date of the impugned order of discharge, but no such application was received in the office of the Superintendent of Police at all. The letter, a copy of which has been annexed as Annexure-3, does not bear the official stamp or the signature of the receiving authority.

7. From the enquiry report, it appears that the petitioner's wife Poonam Khalkho was examined at the departmental enquiry as a material witness and the petitioner had thereby availed the opportunity of cross examining her. The petitioner's contention that his wife Poonam Khalkho was not examined at the departmental enquiry, is incorrect and misleading. It also appears that on a previous complaint of the petitioner's wife, an enquiry was conducted by the then Dy. S.P. who had submitted her report on 27.05.2002 and on the basis of such report, the Superintendent of Police had directed that a part of the salary of the petitioner be given directly to the petitioner's wife. It was also observed in the order of the S.P. that the petitioner had himself agreed to the payment of part of his salary to his wife. The enquiry report submitted by the Dy. S.P. was considered in evidence. The petitioner did not question the correctness of the enquiry report nor did he demand that the enquiry officer namely the Dy. S.P. be produced for her cross examination. It cannot therefore be said that the petitioner had suffered any prejudice on account of the non-examination of the Dy. S.P. whose report in respect of the petitioner's conduct, stated in the earlier complaint of the petitioner's wife, was considered in evidence by the enquiry officer. It also appears that in her statement in course of the departmental proceeding, the complainant namely the petitioner's wife had categorically stated that the petitioner, without her consent and permission, had illegally contracted a second marriage with the other lady. The enquiry report also reveals that in reply to the charges, the petitioner had admitted the fact of his second marriage declaring that it was his personal matter. Apparently it is on the basis of such evidences that the disciplinary authority had recorded his finding and had awarded the punishment to the petitioner on the ground that the petitioner's conduct was against the Government Servants Conduct Rules and gross misconduct on the part of the petitioner.

It also appears that there is no confirmed evidence that prior to the passing of

the impugned order of discharge, either the enquiry officer or disciplinary authority had received any subsequent letter from the complainant namely the petitioner's wife either withdrawing her complaint or denying her earlier allegations. It also appears that the appellate authority has drawn up a detailed order recording therein the grounds of charge, the evidence collected in course of the proceeding and the findings recorded by the enquiry officer as also the reason assigned by the disciplinary authority for awarding the punishment of discharge, to the petitioner and had concurred with the findings. The same is also reflected in the order passed by the concerned authority, before whom the Memorial Appeal was filed by the petitioner.

8. I am satisfied that the departmental proceeding was conducted in a fair and proper manner in accordance with the Rules. The petitioner was afforded opportunity of hearing and no prejudice was caused to the petitioner in any manner in his defence. There being no perversity in the findings recorded by the enquiry officer and in the reasons assigned by the disciplinary authority in awarding the punishment, and further there being no infirmity in the impugned orders passed by the appellate authority as also by the authority in the Memorial Appeal filed by the petitioner, I do not find any merit in this writ application. Accordingly, this writ application is dismissed.