
(2013) 11 JH CK 0048
In the Jharkhand High Court
Case No : W.P. No. 3380 of 2004

Shashi Ranjan Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 1 AJR 863 : (2014) 1 JLJR 417

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Judgement

Shree Chandrashekhar, J.—Challenging orders dated 20.08.2002 and 26.08.2003, the petitioner has approached this Court. Heard the learned counsel appearing for the parties and perused the documents on record.

2. A charge-memo dated 10.06.2001 was served upon the petitioner on the allegation that he was involved in a quarrel with passengers in Maruti Van bearing No. BR-16K/6335 and lost his pistol in the process. An enquiry was conducted in which the enquiry officer found the charge proved against the petitioner. On 20.08.2002 the disciplinary authority inflicted the penalty of forfeiture of four increments which would be equivalent to three black-marks. The appeal preferred by the petitioner has been dismissed by order dated 26.08.2003.

3. A counter-affidavit has been filed on behalf of the respondents stating as under,

14. That in reply to para 17 of the Writ Petition it is humbly submitted that the three witnesses were examined by the Enquiry Officer and the Petitioner deliberately did not take part in the departmental proceedings to cross-examine two prosecution witnesses, neither he gave any reasonable cause for not doing so. The Answering Respondent further begs to submit that the witness Sri Sunil Kumar who was posted as the then Deputy Superintendent of Police Head quarter-2, Singhbhum East at Jamshedpur, on receiving the information, when

reached at Kadma P.S., he found that the Petitioner was in Civil dress and smell of alcohol was coming out of his mouth, and the same was also felt by the Officer-in-Charge, P.S. Sonari, Sub Inspector Anil Kumar Gupta and others that the Petitioner was in drunken condition and in that condition the Petitioner failed to protect his service Revolver.

15. That in reply to para 18 of the Writ Petition it is humbly submitted that the Enquiry Officer concluded that the Petitioner was in drunken condition and held him guilty on all counts and all the charges against the petitioner were proved against the petitioner in totally that he failed to protect his service Revolver and he was carrying his Service Revolver in Civil dress, which he was not supposed to carry, and other charges as mentioned in the charge-sheet.

4. The learned counsel appearing for the petitioner has submitted that, though the enquiry officer has found the charge true, such finding has been recorded by the enquiry officer considering an extraneous material, that is, the witness namely, Sunil Kumar stated before the enquiry officer that the petitioner was drunk at the time of incidence. He has further submitted that, such a charge was never framed against the petitioner and therefore, the evidence of P.W. 2, Sunil Kumar should not have been taken into consideration by the enquiry officer for recording a finding that the charge against the petitioner has been found proved. Since the order of forfeiture of four annual increment equivalent to three black-marks has been passed by the disciplinary authority while agreeing with the finding recorded by the enquiry officer, the penalty order is liable to be quashed.

5. As against the above, the learned counsel appearing for the respondents has submitted that, since the witnesses supported the charge framed against the petitioner and the enquiry officer recorded a finding that the charge levelled against the petitioner has been found true, the penalty of forfeiture of annual increments for four years has been passed against the petitioner. He has further submitted that, an opportunity to cross-examine the witnesses was given to the petitioner, however, the petitioner did not appear before the enquiry officer and therefore, at this stage, the petitioner cannot contend that the evidence on record could not have been considered by the enquiry officer as well as the disciplinary authority.

6. On a perusal of the documents on record, I find that no charge was framed against the petitioner that he was found drunk at the time of incidence. The Deputy Superintendent of Police, Sunil Kumar deposed before the enquiry officer that at the time of incidence, the petitioner was drunk however, the petitioner was not examined by a doctor. This evidence has been heavily relied upon by the enquiry officer for recording the finding that the charge against the petitioner has been found proved. It is also a matter of record that the petitioner lodged a case into the incidence which was registered as Kadma P.S. Case No. 69 of 2001 corresponding to S.T. Case No. 84 of 2003. The case was found true and a charge-sheet was submitted in the said case. It is also an admitted fact that the pistol which the petitioner lost has been recovered. The accused persons in

Kadma P.S. Case No. 69 of 2001 were criminals who were recently enlarged on bail.

7. Rule 826 of the Jharkhand Police Manual provides that in the matter of punishment, the disciplinary authority is required to discriminate insofar as, the quantum of punishment is concerned. In the present case, a First Information Report was lodged by the petitioner and the case was found true. The pistol which the petitioner lost in the scuffle has been recovered. None of the persons residing in the locality has been examined as witness. Only three formal witnesses have been examined by the department in support of the charge. Although neither a charge of being drunk at the time of incident was framed nor the petitioner was medically examined, the enquiry officer based his conclusion on the evidence of Sunil Kumar which is not permissible in law. I further find that the appellate authority after narrating the facts of the case suddenly concluded that he agreed with the conclusion of the disciplinary authority and rejected the appeal.

8. In *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Hon"ble Supreme Court has observed as under,

36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider" is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

9. The only charge which can be said to be proved is, that the petitioner lost his pistol. However, the pistol which the petitioner had lost, has now been recovered and therefore, I find that the imposition of penalty of forfeiture of increment for four years is excessive and definitely disproportionate to the charge framed and found proved against the petitioner. In view of the aforesaid, the impugned orders dated 20.08.2002 and 26.08.2003 are quashed and the matter is remitted back to the disciplinary authority for a decision afresh insofar as, it relates to quantum of punishment.