
(2005) 08 PAT CK 0077
In the Patna High Court
Case No : L.P.A. No. 734 of 2005

The State of Jharkhand

APPELLANT

Vs

Kamlakant Mishra and Others

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Citation : (2006) 3 BLJR 2404

Hon'ble Judges : J.N. Bhatt, C.J;Nagendra Rai, J

Bench : Division Bench

Advocate : Naresh Dikshit, for the Appellant; S.B.K. Manglam, for the Respondent

Judgement

1. After having heard the parties and considering the facts, the delay, as prayed for, is condoned.
2. By the order passed in the domestic inquiry against the original petitioner one Kamla Kant Mishra, Assistant Sub-Inspector of Police, at the relevant time posted at Chatra, now in the State of Jharkhand, who was found delinquent, the disciplinary authority imposed the penalty of reduction in the lower rank for a period of one year without cumulative effect for the proved charge of absenteeism.
3. After the award of punishment by the department as sequel to the departmental inquiry, the original petitioner preferred an appeal against that before the Director General of Police. Subsequently, he filed a writ petition being CWJC No. 1055 of 1996. The said writ petition was disposed of with a direction to the competent authority to dispose of the pending appeal within a period of four weeks. Thereafter the appeal came to be heard on merits in which appellate authority, in terms of Rule 853-A(C) of the Bihar Police Manual, 1978, which provides for exercise of power for the enhancement of punishment in a given fit case, enhanced the punishment by awarding punishment of compulsory retirement to the original writ petitioner delinquent respondent No. 1.

4. Being dissatisfied, the original petitioner delinquent respondent No. 1, challenged the said order in CWJC No. 1211 of 2003 which came to be disposed of on 2.12.2004 by the impugned order wherein the learned Single Judge was pleased to remand the matter to the appellate authority which means that the enhanced punishment came to be quashed reviving the appeal filed by the delinquent. However, it is further observed in the impugned order that if the original petitioner presses the appeal before the Director General of Police then he shall proceed to pass an appropriate order in accordance with law and it goes without saying that the consequential benefits, if any, would be paid to the petitioner.

5. The main grievance of the counsel for the government- appellant, State of Jharkhand, has been that upon remand and in view of the aforesaid observation, if the original petitioner delinquent does not press or withdraws the appeal filed by him, then no useful purpose will be served as in that eventuality the order recorded by the disciplinary authority awarding the punishment shall stand.

We appreciate this stand taken by the appellant State of Jharkhand. It is in these context that now we are promoted to observe that upon the remand, the appellate authority is directed to hear the appeal on merits after giving hearing to the parties and following the procedure and in the facts and circumstances, we are of the opinion that in the event of exercising the right to withdraw the appeal on, remand, the appeal will be rendered infructuous or no further order could be passed leaving the department helpless. Notwithstanding that, our attention is drawn to Clause (c) of Rule 853-A of the Bihar Police Manual, 1976 which reads hereunder :-

853-A (a) x x x x .

(b) x x x x

(c) When an appeal has been filed and the Inspector-General on applying his mind thinks that he should enhance the punishment, he can dismiss the appeal but must simultaneously mention in that order that as per powers given in the Rule 853-A (a) he has decided to review it for enhancement and take action for obtaining a show cause, etc. where necessary.

6. It can be very well visualized from the aforesaid provisions, we have quoted, that even if the delinquent or the party withdraws appeal, that will obviously result into dismissal of the appeal being a necessary corollary. However, the appellate authority is vested with the powers to enhance the punishment even while dismissing the appeal in terms of Rule 853-A(c) of the Police Manual and it will be open for the appellate authority to exercise such power.

7. In the result, this appeal shall stand disposed of at the admission stage itself. No costs.