

(2016) 02 JH CK 0004
In the Jharkhand High Court
Case No : W.P. (S) No. 1100 of 2009

Tribhuwan Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 02 JH CK 0004

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : S.N. Pathak, Sr. Advocate, for the Appellant;

Final Decision : Disposed off

Judgement

Pramath Patnaik, J.—1. In the accompanied writ application, the petitioner has inter alia, prayed for issuance of writ of certiorari for quashing order dated 13.01.2009/15.01.2009, by which, the appeal against the order of dismissal of the petitioner dated 28.01.2008, has been rejected.

2. Sans details, the facts as disclosed in the writ application, in brief, is that the petitioner was initially appointed as a direct Sub-Inspector of Police and after getting training served in the different places of the erstwhile State of Bihar and State of Jharkhand and during his service career he received 40-45 awards. However, when the petitioner was posted on deputation in Jamda Police Station, at about 2.00 p.m. extremists attacked at Bada Jamada O.P and snatched 9 rifles, cartridges and one service revolver. It is alleged that the officials and the constables present there, fled away to save their life and did not protest the attack of extremists. It has been stated that for the alleged act, charges were framed against the petitioner and he was put under suspension and was asked to submit show cause, to which he replied, which was not considered and he was proceeded departmentally, wherein the enquiry officer found him guilty of the charges. It has been stated that on the findings of the enquiry officer that the petitioner did not show his bravery and any quality of competent police officer,

the Superintendent of Police, Chaibasa recommended for dismissal from services and the petitioner was asked to submit show cause, which he replied vide reply dated 16.05.2007. However, on the basis of recommendation of the Superintendent of Police, Deputy Inspector General of Police, Kolhan Range affirmed the enquiry report and passed an order of dismissal vide order dated 28.01.2008, which was affirmed by appellate authority vide order dated 13.01.2009/15.01.2009.

3. Being aggrieved by the impugned order of dismissal from services, the petitioner having left with no alternative, efficacious and speedy remedy has approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievances.

4. During pendency of the writ application, a supplementary affidavit dated 09.01.2013 has been filed on behalf of petitioner to bring home the point that the petitioner, on whom charges are of lesser in gravity, has been inflicted highest degree of punishment i.e. dismissal from services while the persons, who are found to be charged with grave misconduct have been awarded lesser punishment, therefore, the petitioner prays that a lesser punishment may be inflicted in commensurate with the gravity of charges. It has further been stated that one Shankar Thakur, Assistant Sub-Inspector of Police, against whom the disciplinary authority has passed the order of dismissal, the appellate authority setting aside the order of dismissal imposed a lesser punishment, putting him in the basis grade for the next years without having cumulative effect.

5. Counter affidavit has been filed on behalf of respondent No. 4 repelling the assertions made in the writ application. It has been contended inter alia that the charges against the petitioner was very serious in nature and the petitioner was on duty at Barajamda Outpost on 31.03.2004, when the extremist (M.C.C) attacked and with the help of Chakku (Khife), Danda (lathi) and Chain, they snatched away as many as nine rifles, 555 cartridges and some bullets. In the enquiry, the enquiry officer also found the petitioner guilty of serious negligence in duty, not showing braveness befitting the police officer though the petitioner was present at the spot and the charges leveled against the petitioner has substantially been proved. It has further been contended that after affording sufficient opportunity to the petitioner to defend himself of the charges, the impugned order of dismissal from services has been passed, which has been confirmed by the appellate authority, which is legally justified needs no interference by this Court.

6. Heard Dr. S.N. Pathak, learned counsel for the petitioner and learned J.C to A.G for the respondents.

7. Learned senior counsel for the petitioner apart from assailing the follies in the police department has referred to geographical location of the police station and the enquiry report, which clearly indicates that the petitioner was not found guilty rather the officer-in-charge was responsible though the Officer-in-Charge

has been proceeded but he has been inflicted with lesser punishment so the petitioner has been subjected to hostile discrimination. Learned senior counsel for the petitioner submitted that the doctrine of parity ought to have been extended to the petitioner while inflicting the punishment, but, in the instant case, other co-delinquent has been awarded lesser punishment.

8. As against this, learned counsel for the State submits with vehemence that it is the admitted case that the petitioner was on election duty and the incident occurred very close to the place where the petitioner was taking his mid-day-meal in the resident of one police officer, but the petitioner despite his knowledge did not show the bravery to fight rather it was an act of cowardice on the part of the petitioner, for which just punishment has been imposed.

9. After having heard learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has been able to make out a case for interference mainly on the ground of doctrine of parity, for the following facts, reasons and judicial pronouncements:

"(i).Admittedly, on the fateful day while the petitioner was on election duty at Jamda Police Station at about 2.00 p.m. taking his lunch, there was an extremists attack on the said out post, in which, the extremists looted away rifles, cartridges and revolvers. The imputation of charge against the petitioner is that he did not show his bravery and duty-fullness, which was befitting of a police officer. However, on perusal of the enquiry report dated 27.04.2006, it is evident that no insinuation of guilt has been found against the petitioner, but the officer, who was responsible for the protection of the said out-post though charged with the same allegations but has been inflicted with a lesser punishment whereas the petitioner has been inflicted with major punishment of dismissal from services. When the two persons have been similarly placed in a departmental proceeding, the parity of punishment should be there.

(ii).So far as parity in quantum of punishment among the delinquents is concerned, it would be profitable to refer to a decision rendered by the Hon"ble Apex Court in the case of Rajendra Yadav v. State of Madhya Pradesh and Others as reported in , (2013) 3 SCC 73, in particular paragraph 9, which is quoted herein below:

"9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."

Applying the same principle, as laid down by the Hon''ble Apex Court in the above-referred case, the petitioner deserves the same benefit as has been extended to the co-delinquent.

10. As a cumulative effect of the facts, reasons, judicial pronouncements and as a logical sequitur to the reasons stated in the forgoing paragraphs, the impugned order or dismissal from services and the order passed by the appellate authority dated 13.01.2009/15.01.2009 confirming the order of the disciplinary authority, being not legally sustainable, are hereby quashed and the matter is remitted back to the disciplinary authority with a direction to pass appropriate order on the quantum of punishment/delinquency proved against the petitioner, keeping in view the parity between the co-delinquents within a period of two months from the date of receipt/production of copy of this order, in accordance with law.

11. With the aforesaid observations and directions, the writ petition stands disposed of.