
(2010) 04 JH CK 0105
In the Jharkhand High Court

Vineet Kumar Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 58 BLJR 760

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—By Court Heard counsel for the parties.

2. The petitioner is aggrieved by the impugned order of his removal from service passed by the disciplinary authority as also the order of rejection of his appeal passed by the appellate authority and the order of rejection of his revision application passed by the revisional authority.

3. The petitioner was employed as a Constable in the C.I.S.F. He was deployed on duty as house guard at the house of a minister at New Delhi.

On 02.08.2002 he was assigned duty from 8.00 am to 10.00 am and after a break, from 16.00 Hrs. to 18.00 hrs and again after a break, from 20.00 Hrs. to 2.00 AM of the following day. It appears that after completing his duty from 16.00 Hrs. to 18.00 Hrs. on 02.08.2002, the petitioner, after obtaining a verbal permission from his incharge officer, had gone out along with one of his colleagues who was posted at a different house as a house guard and both had proceeded towards the market on scooter. While his colleague was riding the scooter the petitioner was a pillion rider. They met with an accident resulting in multiple injuries to both and they were rushed to the nearby hospital. At the hospital, the doctor who examined the petitioner had found multiple injuries on the person of the petitioner and had also found the petitioner smelling with alcohol.

4. On the charge that the petitioner had failed to attend duty without prior permission in between 20.00 Hrs to 2.00 AM on 03.08.2002 and on the further

charge that during duty hours he was found drunk, and considering both these acts as gross acts of indiscipline, the petitioner was proceeded against departmentally.

It appears that though the petitioner was deployed for duty at New Delhi but his original headquarters being Bokaro Thermal Power Station, Bokaro, he was later sent back to his headquarters whereafter the departmental proceeding was initiated.

5. Admittedly, the petitioner was given opportunity of being heard in as much as, he was served with the Memo of charge and his written explanations to the charges were received but being not satisfied with the explanations offered, the departmental proceeding was initiated and continued in which the petitioner was given opportunity of being heard. At the conclusion of the enquiry, the Enquiry Officer found both the charges proved against the petitioner and on the basis of the findings as recorded in the enquiry report, the disciplinary authority proceeded to record punishment of removal from service against the petitioner. However, such order of punishment was recorded only after serving a copy of the enquiry report to the petitioner and serving upon him a notice to explain as to why he should not be dealt with the extreme punishment.

6. The petitioner's appeal against the impugned order of his removal from service was rejected and likewise, the revision application preferred by him was also rejected by the revisional authority.

7. The petitioner has assailed the impugned order basically on the following grounds:

(i) The Enquiry Officer has erred in failing to consider the evidences on record in proper perspective.

(ii) The Enquiry Officer did not give a reasonable and adequate opportunity to the petitioner to submit his defence by way of evidence in as much as, the Enquiry Officer has merely relied upon the medical report without considering the petitioner's objections that the endorsement as contained therein to the effect that the petitioner was smelling of alcohol, was not a correct and genuine endorsement and rather, it appears to have been subsequently inserted by another person in a different handwriting. In the light of the objections taken by the petitioner, the medical officer who had examined the petitioner and submitted the medical report ought to have been examined so as to enable the petitioner to cross examine him on medical particulars.

(iii) Even otherwise, in the light of the admitted facts, that the petitioner was not riding the scooter at the time of accident and he was merely a pillion rider, the disciplinary authority ought to have considered that the gravity of the charge, did not invite the extreme punishment against him.

8. Per contra, learned Counsel for the respondents would invite attention to the recordings in the Enquiry Report made by the Enquiry Officer and would submit

that though the petitioner was deployed for duty in between 24.00 Hrs. to 2.00 am on 03.08.2002, he had not reported for duty. His failure to attend duty was on account of the fact that he had purportedly met with an accident but the fact which has come out in the findings of the Enquiry Officer was that at the relevant time the petitioner was under the influence of alcohol and this, in terms of the Rules of discipline of the armed forces to which the petition belongs, is a gross act of indiscipline and does invite the extreme punishment.

9. Upon hearing the rival submissions of the learned Counsel and upon going through the documents on record including the enquiry report as also the impugned order of the disciplinary authority, I do find that in the enquiry proceedings the petitioner was given a reasonable opportunity of being heard and the defence offered by him was also considered. The petitioner therefore cannot claim that he was not given adequate and reasonable opportunity of hearing and of submitting his defence.

10. Nevertheless, even from the admitted facts, it appears that after performing his duty during the assigned hours in between 16.00 Hrs. to 18.00 Hrs, the petitioner had obtained permission, albeit oral, from his incharge officer for going out. It also appears that the petitioner had accompanied one of his colleagues, who was posted in another house on guard duty, to the market and while they were travelling in the scooter, they had met with an accident. Admittedly the petitioner was a pillion rider and not riding the scooter at the relevant time.

11. The reason for the petitioner's failure to report for duty at 24.00 Hrs. has been explained by the petitioner by reference to the injuries which he had sustained in the road accident and his being admitted to the hospital for the treatment of his injuries.

Though it does appear from the evidences that at the time of his medical examination, the doctor had found that his mouth was smelling of alcohol, but there is no allegation that the petitioner had consumed liquor during duty hours.

Learned Counsel for the respondents has not pointed out any such Rule which restrains absolutely the personnel employed in the armed services from consuming alcohol beyond duty hours.

The other aspect would point out at best that the petitioner did not report for duty in between 24.00 Hrs. to 2.00 am on 03.08.2002 but again, a reasonable explanation has been offered by him for his failure to attend duty at that time.

12. Considering the above facts and circumstances, there appears force in the petitioner's argument that the punishment meted out to him is highly disproportionate to the charges. In this view of the matter, though this Court being a writ Court, is not expected to delve into the evidences on record and act as a Court of appeal yet, it can take judicial notice of the fact that as compared to the gravity of the charges, the punishment inflicted is certainly disproportionate and therefore the impugned order does suffer from the vice of

non-application of mind to this aspect of the matter.

13. In the light of the above facts and circumstances, the impugned order of the Disciplinary Authority as also of the Appellate and Revisional Authorities, are hereby set aside. The matter is remitted back to the disciplinary authority to re-consider the issue relating to the appropriate punishment which may be imposed upon the petitioner considering the gravity of the charges against him and pass an appropriate order by recording a lesser punishment other than the punishment of removal from service. The decision in the above lines should be taken by the concerned authorities of the respondents within three months from the date of receipt/production of a copy of this order.

The period of the petitioner's absence from duty, since his removal from service till the date of his reinstatement, shall be deemed as period spent on duty for the purpose of computation of his pension etc. However in absence of any pleading by the petitioner that he was not gainfully employed during this period, he shall not be entitled for back wages.

Let a copy of this order be given to the counsel for the respondents.