

(2009) 07 JH CK 0001
Jharkhand High Court
Case No: None

Shyam Sundar Singh

APPELLANT

Vs

Union of India (UOI), Inspector
General, C.I.S.F., Deputy
Inspector, C.I.S.F., and
Commandant, C.I.S.F., and
Others

RESPONDENT

Date of Decision: July 1, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 395

Hon'ble Judges: Gyan Sudha Mishra, C.J; Sushil Harkauli, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred by the appellant Shyam Sundar Sharma, who had been discharging duties as a Constable in the Central Industrial Security Force, and while he was in service, he was implicated in a criminal case u/s 395 of the Indian Penal Code on the charge of dacoity. The petitioner-appellant herein was taken into custody, as a result of which, he remained away from the service and failed to discharge duties as Constable in the Organization. The appellant was arrested on 16.6.1986 due to which he could not report for duty. The appellant, however, had been enlarged on bail on 1.10.1986, but in spite of the fact that he was enlarged on bail, he did not report for duty, as a result of which, a memorandum of charge was issued to the appellant indicating that he had remained away from the duty and submitted a false medical report to the effect that he was bedridden on account of illness. The memorandum of charge further indicated that the appellant although was taken into custody on account of a criminal charge levelled against him, he submitted a false medical report and thereafter he although was released on bail, he never reported for duty. The memorandum of charge further states that an order

of suspension had been issued against him for unauthorized absence, which he had refused to receive while he was lodged in the jail on account of the criminal charge.

2. For all the aforesaid three charges, a departmental proceeding was initiated against the appellant and thereafter the charges having been found to be proved, an order of punishment was passed dismissing him from service. The order of punishment was passed on 5.12.1986 and in view of the order of dismissal, the petitioner remained out of service, all these years. In the meantime, however, the criminal case that had been lodged against the petitioner, continued for trial in which he was finally acquitted by the trial court by judgment and order dated 13th of March 1992.

3. Since the appellant was acquitted of the criminal charge, on account of which he had remained away from service and the absence was treated to be an unauthorized absence from duty, he filed a writ petition before the learned Single Judge wherein he challenged the order of his dismissal essentially on the ground that as he was acquitted of the criminal charge, he was; fit to be reinstated in service with all consequential benefits. He, inter alia, also contended that he was deprived of the opportunity to participate in the enquiry as the enquiry had been held ex-parte.

4. The learned Single Judge, on scrutiny of the entire background of facts and the attending circumstances of the matter, was finally pleased to hold that the petitioner/appellant herein was found guilty of the charge of unauthorized absence which did not require interference for even though he was enlarged on bail in the criminal case which could not have prevented him from discharging his duties, he failed to report for duty. The findings recorded on the charge of unauthorized absence, therefore, were confirmed by the learned Single Judge and he thus refused to interfere with the order of dismissal. Consequently, the writ petition stood dismissed against which this appeal has been preferred.

5. Learned Counsel for the appellant practically reiterated the arguments that were advanced before the learned Single Judge wherein the entire emphasis of the argument was on the fact that the petitioner/appellant having been acquitted of the charge, which was levelled against him, was fit to be reinstated in service and as he was deprived of the opportunities to participate in the enquiry, the order of dismissal was fit to be quashed and set aside. Learned Counsel further endeavoured to impress upon this Court that it was not possible for the appellant to report for duty as the order of dismissal was still in existence and hence he could not claim reinstatement without an order of acquittal in his favour but once the order of acquittal was recorded in his favour he was entitled to reinstatement.

6. Initially, we found some substance in this argument that if the order of dismissal was in existence, then the appellant possibly could not have reported for duty in the wake of the order of dismissal. But this argument was instantly dispelled once we

noticed that the memorandum of charge for which the enquiry was held against the appellant, was not on account of pendency of the criminal case but the same was initiated as the appellant had remained away from duty without informing and gave a false information that he was unable to join the duty on account of his illness, whereas the fact was that he had been implicated in a criminal case. Secondly, the charge indicated that the appellant had refused to receive the order of suspension due to which the authorities were compelled to hold the enquiry ex-parte against the petitioner.

7. In view of the aforesaid charges, the enquiry had been held and the charges having been found to have been established, the order of dismissal was passed. Having considered this aspect of the case, the appellant could not be permitted to raise the issue that once he was acquitted of the criminal case, he had a right of being reinstated as that was not the ground for which the enquiry had been held since the same was not even within the knowledge of the authorities. As already stated, the enquiry was initiated on account of unauthorized absence and non-receipt of the order of suspension, which was passed against him and those charges having been established, the order of dismissal was passed on the ground of misconduct which was held to have been proved. Thus, we have noticed that if the appellant refused to receive the order of suspension, it was not open for him to contend that the enquiry was held ex-parte against him and he was deprived of the opportunity of hearing. If he had received the order of suspension and the memorandum of charge, then he could have participated in the enquiry where he could have availed the opportunity to present his defence case. Besides this, the appellant had also failed to disclose it before the authority that he could not resume his duties because he had been implicated in a criminal case. On the contrary, he concealed by taking up a false plea that he had been taken ill and relied upon a false medical certificate that he was prevented from joining duty. Thus, from these averments, it is clear that the charges levelled against the petitioner was rightly held to have been proved and once the charge was held to be proved, the order of punishment of dismissal having been held to have taken effect at least six and years earlier to acquittal, cannot be allowed to be assailed on the plea that as he was acquitted of the charge in the criminal case he was fit to be reinstated in service for the simple reason that the order of dismissal was not passed on account of his implication in the criminal case but on account of his unauthorized absence from duty as also on account of the false plea that he was ill and further refused to receive the order of suspension and the memorandum of charges as already indicated hereinbefore.

8. Thus, the learned Single Judge appears to be correct in observing that even if the petitioner/appellant was prevented from joining his duties on account of his custody due to the criminal charge, he should have at least reported for duty after he was enlarged on bail, meaning thereby, that he could have explained his absence for the period during which he was away from duty at least after he was enlarged on bail.

The order of dismissal having not been passed due to pendency of the criminal case but the same having been passed due to unauthorized absence and other allied charges referred to hereinbefore, the plea raised on behalf of the appellant that he was fit to be reinstated in service after his acquittal is not fit to be accepted since the charges of dereliction of duty were proved. Thus, we find no substance in this appeal. Consequently, it is dismissed.