

(2003) 08 JH CK 0003

Jharkhand High Court

Case No: Writ Petition (S) No. 227 of 2003

Ajay Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 27, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Police Manual Rules - Rule 824, 825

Citation: (2003) 4 JCR 623

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: K.K. Jha and Kamal, for the Appellant; Krishna Shankar, JC to AG, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 5.8.2002

passed by respondent No. 4 Deputy Inspector General of Police, North Chotanagpur Region, Hazaribagh, whereby while setting aside the

punishment of dismissal of the petitioner, substituted the punishment by stopping his annual increments for the next 15 years.

2. Petitioner who was in the service of the respondents as a Constable was suspended vide order dated 29.2.2002 and the departmental

proceeding was initiated after holding departmental inquiry and on the basis of the report of the Inquiry Officer, petitioner was asked second show

cause which was submitted by him. Finally respondent No. 5 Superintendent of Police, Giridih dismissed the petitioner from his service vide order dated 18.3.2002. Petitioner as per the provisions of the Police Manual preferred appeal before respondent No. 4 who is the appellate authority.

The appellate authority after considering the facts of the case and after hearing the petitioner set aside the order of dismissal of the petitioner from service but substituted the punishment by stopping his annual increments for the next 15 years with a direction that that this should be effective on the enhancement of salary of the petitioner in future.

3. Mr. K.K. Jha, ""Kamal"", learned counsel for the petitioner assailed the impugned order of the appellate authority as being unreasonable, excessive and disproportionate to the offence committed by him, if any. Learned counsel drawn my attention to the relevant provisions of the Police Manual by which service condition of the petitioner is governed and submitted that there is no provision for withholding 15 annual increments at one time and the said order is mala fide, arbitrary and without application of mind.

4. On the other hand, learned J.C. to learned Advocate General submitted that the impugned order of appellate authority withholding 15 increments is reasonable and fully justified in view of the charges levelled against the petitioner. Learned counsel submitted that the appellate authority is fully empowered under Rule 825 of the Police Manual to impose any punishment and there is no bar in passing order of punishment by stopping 15 increments.

5. Before appreciating rival contention of the learned counsel appearing for the parties, I would like to quote Rule 824 of the Police Manual, which reads as under :

824. Description of departmental punishments.--The following punishments which are sanctioned u/s 7 of Act. V of 1861 may be inflicted departmentally on a police officer of and below the rank of Inspector :--

(a) dismissal,

(b) removal,

(c) compulsory retirement,

- (d) reduction in rank,
- (e) forfeiture of last increment(s) or future increment(s),
- (f) black mark or marks,
- (g) censure.
- (h) confinement to quarters for a period not exceeding 15 years,
- (i) punishment drill.
- (j) extra guard or fatigue duty :

Provided that the punishments mentioned in Clauses (h) and (j) shall be imposed only on members of rank of constables/Havildars and that in

Clause (i) shall be imposed only on constables." Further Rule 851 reads as under :

851. (a) No appeal shall lie except in cases of major punishments enumerated in Rule 828.

(b) Against an order or dismissal, removal, reduction withholding of promotion or periodical increment, suspension with loss of pay, removal from

any office of, distinction or special emolument there shall be one appeal in each case as follows :

Against an order passed by a Superintendent, to the Deputy Inspector General;

Against an original order passed by the deputy Inspector General to the Inspector General;

Against an original order passed by the Inspector General to the State Government.

(c) The orders of appellate authority shall be final subject to provisions of Rule 853.

(d) An order passed with the concurrence of any superior authority (other than the State Government) shall be considered, be an original order of

such superior authority.

6. From bare perusal of the aforesaid Rules, it is manifest that the Disciplinary Authority may impose punishment mentioned therein including

forfeiture of last increment of increments. The only question therefore falls for consideration is as to whether stoppage of 15 annual increments at a

time will amount to have cumulative effect and such punishment of withholding increments for 15 years is justified.

7. The appellate authority in his order has recorded his finding that the important witnesses have not been examined by the prosecution and there

are vital defects in the evidence of the witnesses examined by the prosecution. The appellate authority; therefore, because of these defects,

quashed the order of dismissal but substituted the punishment by withholding, 15 increments. In my opinion, having regard to the finding recorded

by the appellate authority the punishment imposed is excessive and disproportionate to the unproved charges levelled against the petitioner.

Imposition of three future increments would have been proper and reasonable.

8. Although the matter needs reconsideration by the appellate authority on the quantum of punishment but remission of the case will unnecessarily

delay the matter and, therefore, this Court thinks it proper to reduce the punishment imposed by the appellate authority from 15 increments to 3

increments.

9. For the aforesaid reason this writ application is allowed in part and the order of punishment passed by the appellate authority is modified to the

extent by withholding three, increments.