

(2002) 12 JH CK 0008

Jharkhand High Court

Case No: CWJC No. 3492 of 2000

Sajjan Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Dec. 11, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 1 JCR 522

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: V. Shivnath, for the Appellant; M.M. Prasad, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.

Heard Mr. V. Shivnath, learned counsel for the petitioner and Mr. M.M. Prasad, learned counsel for the respondents.

2. The petitioner, a constable of the Central Industrial Security Force, Unit Bokaro Steel Plant was charged for the following acf s of misconduct :--

- Not turning up for "C" shift duty from 9 p.m. of 25.7.1998 to 5 a.m. of 26.7.1998. For such absence, he did not furnish any information nor did he obtained permission of the competent authority;
- Talking in an indisciplined manner at 9.15 p.m. of 25.7.1998 in the office and refusing to go for medical examination when ordered by senior officers;
- Deserting the lines at 4.45 a.m. of 26.7.1998 and continuing the same without any leave/permission; and
- Being an habitual offender of committing various offences and being incorrigible in nature inspite of the deterrent punishment awarded to the petitioner during his

past service.

3. From the final order of removal as contained at Annexure 2 dated 30.1.1999 it is apparent at the very introductory paragraph that a charge-sheet for the aforementioned charges were issued on 20.8.1998. At paragraph 5 infra of the same order it is mentioned thus :--

"During the course of departmental enquiry, the above unauthorized absence of charged official with effect from 26.7.1998 to 22.10.1998 for 88 days has been established."

4. This Court does not understand as to how the period beyond 20.8.1998 (i.e. the date of issuance of the chargesheet) stood stretched up to 22.10.1998. There is no chargesheet that he was absent up to 22.10.1998 but in relation to this charge, the Disciplinary Authority says that he was unauthorisedly absent from 26.7.1998 to 22.10.1998. In the chargesheet, it is mentioned that the petitioner "deserted unit lines at 0445 hrs. on 26.7.1998 and continuing the same till date" "Till date" therefore, means that till date of issuance of the chargesheet and the chargesheet was issued on 20.8.1998. In that view of the matter giving a finding that the petitioner was absent for eighty eight days appears to be a finding for which there was no chargesheet.

5. So far as the charge No. 2 is concerned, the same relates to talking in an indisciplined manner under the influence of liquor. What was he talking about? What was the indiscipline exhibited by him? Was he abusing the senior officer? There is no such indication in the chargesheet. Additionally from paragraph 4 of the order of removal, all that is apparent is that the petitioner had consumed liquor and under its influence he misbehaved with the AC-Z-11 (CW 1).

6. Thus from what is apparent on a bare reading of Annexure 2 is that whatever misconduct the petitioner has been charged with, the same is neither serious nor did it warrant dismissal from service.

7. The only thing that is relevant to be taken into consideration is that the petitioner belonged to a disciplined force and therefore, his action was required to be disciplined and therefore taking alcohol within the service area was certainly not expected from him.

8. The appellate order on appeal is again a confirmation of the punishment inflicted by the disciplinary authority.

9. For the reasons stated above, this Court holds that the punishment of removal from service is grossly disproportionate and is not at all commensurate with the nature of the misconduct charged against him. However, for having acted in an indisciplined manner after having consumed alcohol within the service area the petitioner cannot be allowed to go totally scot free. He certainly deserves a punishment, but not removal from service.

10. For the reasons stated above, the impugned orders by reasons whereof the petitioner has been removed from service are hereby set aside and the matter is remanded to the respondent No. 2 who will pass appropriate orders in relation to reinstatement and shall also consider the desirability of inflicting a lesser punishment after giving adequate opportunity of hearing and in accordance with law.