

**(2010) 04 JH CK 0025**

**Jharkhand High Court**

**Case No:** None

Ainul Hassan Khan

APPELLANT

Vs

The State of Jharkhand, Director  
General-cum-Inspector General  
of Police, Deputy Inspector  
General of Police Police Santhal  
Parganas Range and The  
Superintendent of Police

RESPONDENT

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**Date of Decision:** April 15, 2010

**Hon'ble Judges:** Gyan Sudha Misra, C.J; D.K. Sinha, J

**Bench:** Division Bench

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### **Judgement**

D.K. Sinha, J.

This appeal has been preferred against the judgment and order dated 30.7.2008 passed by the learned Single Judge in CWJC No. 7186 of 200, by which the writ petition which had been filed challenging the order of dismissal was not entertained and consequently the writ petition was dismissed.

2. The petitioner-appellant had challenged the order of dismissal which had been passed on account of the charge levelled against him for unauthorized absence from duty, who had initially proceeded on 30 days leave only w.e.f. 30.11.1989 and after expiry of the same, he was required to resume his duties on 30.12.1989, but the charge against the petitioner was that he overstayed beyond the leave period, without permission till 4.11.1992. The petitioner-appellant in support of his defence had submitted medical certificate through registered post but the same was not accepted and consequently he was dismissed from service, against which he preferred an appeal. The appeal, however, was also dismissed, which gave a cause to the petitioner-appellant to file a writ petition before the learned Single Judge.

3. Assailing the order passed by the learned Single Judge, it was contended that the proceedings were conducted ex parte without giving him any reasonable

opportunity to defend himself and therefore the order of dismissal which was passed as a result of the enquiry was vitiated and was fit to be quashed and set aside. As already stated, the learned Single Judge was pleased to reject the writ petition.

4. The petitioner-appellant thereafter preferred this Letters Patent Appeal assailing the order passed by the learned Single Judge as also of the disciplinary authority of the Inquiry proceeding.

Initially, in course of argument, it could be noticed that the petitioner-appellant has already attained the age of superannuation and, therefore, it was considered that it would be a futile exercise to enter into the correctness of the order of dismissal passed by the competent authority. But we were later on informed that the appellant has not yet reached the age of superannuation as his date of superannuation is due only in 2012.

5. However, the petitioner remained away from duty for almost three years for which there is absolutely no explanation but he had filed an application by registered post to his superior authority, requesting that his unauthorized absence of three years be converted into a period of duty on account of the leave that had accumulated in his favour

6. Learned Counsel for the petitioner however submitted that even if the order of dismissal has already taken effect and the appellant has already reached the age of superannuation, he would still be entitled to the back wages, in case this Court holds that the order of dismissal passed against the petitioner-appellant was unjustified.

7. However, we have noticed that the appellant's contention to the effect that he had not been granted adequate opportunity to defend himself is factually not correct since he duly participated in the enquiry and contested the proceeding after which his defence case was rejected by the Inquiry Officer which was upheld by the disciplinary authority, after which an order of dismissal was passed against him. Nevertheless, we have noticed that the charge against the petitioner was not of moral turpitude or any financial irregularity. The only charge against the petitioner-appellant was that he over stayed beyond the period of leave which he had availed and thereafter he appears to have sent a letter by registered post for treating his unauthorized absence as period on duty by virtue of the leave which he had earned to his credit.

8. We have also noticed that the appellant had served not less than 20 years in the service of the respondents as Head Constable/Havildar and his record is also unblemished and the only reason for issuance of the order of dismissal is unauthorized absence i.e. overstaying beyond the period of leave.

9. In view of this charge, the order of dismissal which essentially was passed as he had failed to get his leave sanctioned inspite of his accumulated leave period as a consequence of which he not only has been deprived of the salary during which he was unauthorizedly absent from duties, which would be forfeited on account of the order of dismissal, to additionally would also be deprived of pensionary benefit to which he would otherwise have been entitled, if the order of dismissal had not been passed against him.

10. In our considered opinion, this amounts to imposition of dual punishment on the petitioner-appellant, as on the one hand he would be deprived of the left over service period which he would have availed if the order of dismissal had been passed and consequently has also been deprived of the salary for this period. In addition, he would also be deprived of the pensionary benefits, although he has served for more than 20 years, as a consequence of the order of dismissal.

11. This in our view, is too harsh and disproportionate to the charge levelled against the petitioner for which he had been dismissed from service. He obviously has already suffered as he has been deprived of the service on account of his unauthorised absence and in addition if he is deprived of the pensionary benefits also although he has served for more than 20 years. The same, in our view, is neither befitting to the magnitude of the charge levelled against him nor can be considered to be proportionate to the alleged charge levelled against him.

12. Besides this, learned Counsel for the appellant has also invited the attention of this Court to the cases reported in [Bhagat Ram Vs. State of Himachal Pradesh and Others](#), , [Ranjit Thakur Vs. Union of India \(UOI\) and Others](#), , and [B.C. Chaturvedi Vs. Union of India and others](#), , where in the case of employees of a lower rank as also the case of low paid employees, the order of dismissal without entering into its correctness of the order of dismissal, have been converted into an order of compulsory retirement, so that the employee is not deprived of his pensionary benefits.

13. Applying the ratio laid down in the aforesaid cases as also the facts and circumstance in which the appellant was dismissed from service, we are of the view that the ends of justice would be met if the order of dismissal is finally converted and treated to be an order of compulsory retirement, so that the appellant is not deprived of the pensionary benefits.

14. Counsel for the appellant initially also prayed for some back wage to be paid to him. However, we do not accept this contention, since we have not interfered with the order of dismissal, due to unauthorized absence of the appellant for about three years and we are of the view that the unauthorized absence of the appellant for a period of three years from duty without assigning any reason to the authority and that too by an officer, who is discharging the duty as a member of the police force as Havildar, is unbecoming of the conduct of an officer of the Police force and,

therefore, we do not deem it appropriate to interfere with the order of dismissal and once we have thought it appropriate not to interfere with the order of dismissal, question of payment of back wages do not arise.

15. However, we have already stated hereinbefore that the order of dismissal be converted into an order of compulsory retirement, on account of the fact that the appellant has discharged not less than 20 years of service into the department and his dismissal although was due to unauthorised absence, it did not involve the offence of moral turpitude. In that view of the matter, it is directed that the order of dismissal be converted into an order of compulsory retirement. Consequently, the appellant would be entitled to all pensionary benefits from the date of his superannuation, which shall be computed on the basis of the actual period of service rendered by the appellant while he was discharging duties in the concerned department.

16. The appeal, therefore, stands partly allowed in view of the substitution of the order of punishment of dismissal into an order of compulsory retirement. The period of service rendered by the appellant prior to his unauthorized absence from duty shall also be counted as continuous service in view of the existing circumstance of the matter.