

(2010) 03 JH CK 0018

Jharkhand High Court

Case No: None

Devendra Kumar Singh

APPELLANT

Vs

The State of Jharkhand
and Others

RESPONDENT

Date of Decision: March 11, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.

Heard counsel for the parties.

2. The petitioner in this writ application has prayed for an order for quashing the order dated 16.02.2003 (Annexure-4) passed by the disciplinary authority whereby the disciplinary authority has recorded a punishment against the petitioner dismissing him from service on the ground that the charges framed against the petitioner in the disciplinary proceeding, were proved against him.

Prayer also is for quashing the order dated 31.07.2003 (Annexure-5) passed by the appellate authority whereby appeal preferred by the petitioner against the impugned order of the disciplinary authority has been rejected.

A further prayer has been made for quashing the order dated 08.04.2004 (Annexure-7) passed by the revisional authority whereby the revision application filed by the petitioner against the impugned orders of the disciplinary authority as also of the appellate authority, was dismissed.

3. The petitioner was employed as a Constable in the Police Service and was posted in the district of West Singhbhum, Chaibasa.

A disciplinary proceeding was initiated against him on the basis of a charge that he had indulged in acts of gross misconduct, to wit, assaulted a colleague resulting in the death of the victim.

The petitioner was served with a show cause notice to explain. Availing the opportunity, he had submitted his show cause replies. However, not being satisfied with the explanation offered, the disciplinary proceeding was initiated against him.

It also appears that for the same occurrence a separate criminal prosecution was launched against the petitioner in the criminal court and the petitioner had faced trial u/s 302 of the Indian Penal Code. The trial, however ended with the petitioner's acquittal and as it appears from the judgement passed by the trial court, the petitioner was acquitted on the ground of lack of evidence.

In the disciplinary proceeding however, the petitioner was found guilty of the charges and on the basis of such findings of the Inquiry Officer, the disciplinary authority recorded the order of punishment as mentioned above.

4. Assailing the impugned order of his punishment as also the order passed by the appellate and revisional authorities, counsel for the petitioner argues that the disciplinary authority has failed to consider that for the same charges, on which the departmental proceeding was initiated, a separate criminal trial was also initiated against the petitioner and in both the proceedings, the witnesses were almost the same. Learned Counsel submits further that the findings of the Inquiry Officer is also perverse in view of the fact that the inferences drawn and the findings recorded were based entirely on the preliminary inquiry which was conducted behind the back of the petitioner and on the basis of some observations and opinion of the Dy.S.P. It is further informed that at the criminal trial, though the prosecution had projected one eye witness but the witness had failed to support the prosecution case in toto and in absence of any further evidence, cogent and reliable, the petitioner was acquitted and such acquittal has to be deemed as a honourable acquittal.

Learned Counsel argues further that the fact that in the criminal prosecution the petitioner had obtained his acquittal, had a definite bearing on the departmental proceeding and the benefit thereof has not been given to the petitioner.

5. Learned Counsel for the respondents, on the other hand, would argue that the criminal trial was concluded during the pendency of the disciplinary proceeding and the fact of acquittal was not brought to the notice of the Disciplinary Authority and as it appears from the records, the ground of acquittal by the criminal court was taken for the first time before the revisional authority.

6. Having heard counsel for the parties and having gone through the records, it does appear that on the charge of assaulting a colleague, two separate proceedings, one departmental and other criminal, were initiated against the petitioner. The occurrence

being common, the set of witnesses were also common in both the proceedings.

7. It also appears that in the criminal proceeding, the prosecution could not establish the guilt of the petitioner and thereby enabled the petitioner to obtain a clean acquittal from the trial court. The date of acquittal in the criminal trial is 28.02.2001 whereas, the final order in the disciplinary proceeding was passed by the disciplinary authority on 16.02.2003. Admittedly, the date of acquittal had preceded the date when the final order was passed by the disciplinary authority. It also appears that the fact of his acquittal by the trial court was not pointed out by the petitioner to the disciplinary authority and in absence thereof, the disciplinary authority could not possibly have any information regarding the acquittal of the petitioner in the criminal trial.

8. It further appears from the impugned order that the findings therein were recorded on the basis of findings in the preliminary inquiry which, according to the petitioner, was conducted behind his back and also on the basis of some opinion of the Dy.S.P. These facts have not been denied by the respondents. It also appears that the disciplinary proceeding was conducted ex-parte against the petitioner on account of his failure to attend the proceeding.

9. Having considered the facts and circumstances, I find sufficient material to quash the impugned orders of the disciplinary authority as also that of the appellate and revisional authorities. Accordingly, the impugned orders are hereby quashed. The matter is however remitted back to the disciplinary authority to reconsider the entire issue on the basis of the grounds advanced by the petitioner including the ground of his acquittal by the trial court in the criminal proceeding and to pass an appropriate order accordingly. Compliance of this order must be made within a period of three months from the date of this order.