

(2009) 12 JH CK 0029**Jharkhand High Court****Case No:** None

Badri Nath Tiwary

APPELLANT

Vs

The State of Jharkhand, The
Director General of Police,
Jharkhand, The D.I.G. of Police
(Viduntu) and The Commandant,
JAP 7

RESPONDENT

Date of Decision: Dec. 1, 2009**Hon'ble Judges:** Dabbiru Ganeshrao Patnaik, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

Heard learned Counsel for the parties.

2. From the pleadings in the writ application, as it appears, the only issue raised is on the quantum of punishment imposed on the petitioner.
3. Learned Counsel for the petitioner, by referring to Annexure-10 to the writ petition, which is an order of punishment passed by the concerned authorities of the respondents in respect of another co-employee of the petitioner, submits that the said co-employee namely, constable Gopal Paswan, against whom the charge was that he had contracted second marriage even during the lifetime of his first wife and though, a departmental proceeding was conducted against him and the charge was found to be proved against him, but the punishment imposed against him was only of stoppage of increment for one and half year which is equivalent to three black marks in his service record and further, that except the subsistence allowance, he was not to be given full salary. Whereas for identical charge, the punishment inflicted upon him is termination of his service.

4. Learned Counsel submits that the punishment is totally disproportionate to the charges and furthermore, in the matter of inflicting punishment, petitioner has been discriminated.

5. Learned Counsel for the respondents submils that the order of the disciplinary authority has been confirmed by the Appellate Authority as also by the Revisional Authority and therefore, there is no further ground for the petitioner to agitate. As regards the petitioner's claim that another co-employee for the same charges, has been given comparative lesser punishment and the petitioner has been discriminated, learned Counsel submits that these are the matters of record.

6. There can be no dispute to the proposition that the disciplinary authority has its own discretion in the matter of inflicting punishment on the basis of the charges which are found to be proved against the delinquent Government servant in the departmental proceeding. The Rules however, do prescribe certain guidelines under which the disciplinary authority is obliged to consider the proposed punishment in proportion to the gravity of the charges.

7. If, as pointed out by the petitioner, on finding the guilt proved against the co-employee for the same charges, a lesser punishment could in the discretion of the disciplinary authority, be inflicted, then, if other circumstances remaining equal, there is no reason why the petitioner should not deserve similar treatment as given to his colleague. It further appears from the impugned order of dismissal that the disciplinary authority has not discussed, with reference to the gravity of the offence, as to whether the punishment of dismissal from service is the only punishment commensurate with the charges or whether a lesser punishment could have served the purpose of correcting and reforming the delinquent Government servant. Be that as it may, I am satisfied that in the matter of inflicting punishment, the petitioner has apparently been discriminated. 8. In the light of the above facts and circumstances, the impugned order of dismissal is hereby set aside. The matter is remitted back to the disciplinary authority to reconsider the petitioner's case, confining his attention to the question of quantum of punishment which the petitioner would deserve on the basis of the charge proved against him, and also considering the possibility of extending equal treatment to the petitioner as given to the others particularly, to the co-employee referred to by the petitioner. The disciplinary authority shall take an appropriate decision and pass orders in accordance with the law within two months from the date of receipt/production of a copy of this order.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the counsel for the respondent State.