

(2005) 06 JH CK 0021

Jharkhand High Court

Case No: Writ Petition (S) No. 198 of 2005

Braj Kishor Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: June 20, 2005

Acts Referred:

- Bihar Police Manual, 1978 - Rule 826, 843

Citation: (2005) 2 BLJR 1415 : (2005) 106 FLR 993 : (2005) 3 JCR 274

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: S.N. Pathak, for the Appellant; Bharti Kumari, J.C. to GP-IV, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Narendra Nath Tiwari, J.

In this writ application the petitioner has prayed for quashing the order dated 21.4.2004 passed by the respondent No. 4 as contained in Annexure-4 whereby the petitioner has been awarded punishment of compulsory retirement with effect from 20.5.2004 and for quashing the appellate order dated 21.9.2004 passed by the respondent No. 3 as contained in Annexure-6 whereby the appellate authority has rejected the petitioner's appeal. The petitioner has further prayed for an order of his reinstatement with all consequential benefits.

2. The petitioner's case is that he was appointed as a constable in B.M.P.-16 at Nausa Khagaul in the year 1986. In the year 1996 he was transferred to B.M.P.-17 in Palamau where he remained till 2002. The said B.M.P.-17 after coming out the State of Jharkhand became Jharkhand Armed Police -7. In the year 2003 the petitioner had taken four days' leave from 24.10.2003 to 28.10.2003. He was to report on duty on 29.10.2003. But in the mean time, his eldest aunt (Badi Maa) died. The petitioner thus sent an application for extension of his leave by registered post to the

respondent No. 4. In sequence thereafter the petitioner's wife was diagnosed as a patient of suspected cancer. The petitioner had to rush to the doctors at Patna and had to go to several laboratories and nursing homes for various types of tests and investigation concerning his wife's ailment. It took several days and the petitioner under that circumstance, could report on his duty on 6.12.2003. In the mean time, the respondent No. 4 by order dated 11.11.2003 put the petitioner under suspension with effect from 3.11.2003 for remaining absent unauthorisedly. The petitioner was then proceeded against departmentally on the charge of misconduct alleging his absence as unauthorized. The Enquiry Officer on the basis of the statement of solitary witness Shayam Kishore Singh concluded his enquiry and found that the petitioner had overstayed the leave without any order by the competent authority. The petitioner was thus found guilty of misconduct. On the basis of the said enquiry report, the Commandant of Jharkhand Armed Police-7, Hazaribagh held the petitioner guilty and by his order dated 21.4.2004 (Annexure-4) an explanation was asked from him as to why an order of punishment of compulsory retirement be not passed. The petitioner submitted his explanation with necessary detail, but the Commandant being not satisfied with the explanation passed the order of punishment of his compulsory retirement and forfeited the salary of the period of his absence treating the period as half earned leave by his order dated 22.5.2004. Being aggrieved by the said order, the petitioner preferred departmental appeal before the Deputy Inspector General of Police, Jharkhand, Armed Police, Ranchi, who by Memo No. 1105 dated 22.9.2004 rejected the appeal petition holding that there is no point in the appeal petition which can be considered. The grievance of the petitioner is that the order of the respondents are wholly arbitrary, illegal and unjust and that he has been awarded unconscionably harsh and disproportionate punishment even for overstaying the leave, under the compelling circumstance beyond the control of the petitioner. According to the petitioner, the overstay of 38 days would have been adjusted against his unutilized leave. It has been stated that the respondents have passed the impugned orders mechanically and arbitrarily giving the past instances without considering the petitioner's explanation supported by the medical documents and the death certificate of his Badi Maa and he has been illegally removed from the services by way of compulsory retirement prior to about 18 years of his date of superannuation causing untold hardships to the petitioner, his dependants and the family members.

3. Counter affidavit has been filed on behalf of the respondent No. 4 stating, inter alia, that the order passed by the authorities are proper and legal and the same has been passed after due consideration of the materials on records and on the basis of the findings of the enquiry officer as also on the basis of the previous conduct of the petitioner. It has been stated that the petitioner is inhabit of overstaying the leave and for such charges he was even proceeded against earlier in departmental proceeding No. 37/02, At that time a lenient view was taken and he was given mild punishment of one black mark but the petitioner failed to improve himself. Earlier

he was twice dismissed and reinstated by the appellate order. It has been stated that a Government employee cannot claim leave as a matter of right and it is the discretion of the competent authority to grant leave and to consider the grounds. It has been further stated that there is no violation of rule or law in granting the punishment and the quantum of punishment is proportionate to the charge.

4. The petitioner in his rejoinder refuted the grounds taken by the respondents and has stated that on earlier occasions he was given minor punishment for the charge of Overstaying the leave. It has been stated that the circumstances explained by the petitioner have not been considered under which the petitioner was prevented from reporting on his duty and the provisions of Rules 843 & 826 of the Bihar Police Manual have also not been observed. Earlier for the similar charge of unauthorized absence for the period of 195 days the petitioner was awarded punishment of one black mark only and this time for the alleged unauthorized absence of only 38 days the petitioner has been awarded punishment of compulsory retirement before about 18 years of his date of superannuation depriving the petitioner of his valuable legal rights.

5. Dr. S.N. Pathak, learned counsel appearing on behalf of the petitioner, submitted that the impugned orders of punishment are wholly inequitable, arbitrary and unjust. The respondents on the basis of an arbitrary enquiry report have passed the order of punishment without due application of mind. Learned counsel submitted that Rule 826 of the Bihar Police Manual provides that the punishment awarded should be in conformity with the gravity of offence with which the officer is charged and offences involving moral turpitude shall be carefully discriminated from smaller wrong doings. It should also be borne in mind that the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding shall not be taken into account for determining the quantum of punishment. The punishment cannot be awarded without carefully considering the defence of the delinquent officer. Learned counsel further submitted that the punishment for absence without leave is provided by Rule 843 of the said Manual only in the cases of wilful overstaying of leave or absence from duty without leave. Learned counsel submitted that it would be evident from the documents brought on record as Annexures 5 series that the petitioner's Badi Maa died during the said period followed by the illness of his wife which was diagnosed suspected cancer and was a question of her life and death. It has been submitted that the only allegation against the petitioner is that he sent the application for extension of leave through the registered post and that the petitioner had not approached the Head Quarter in person for getting sanction of further leave, which was not at all possible under the said situation. Even the unauthorized absence of the petitioner (only for 38 days) could have been adjusted against the petitioner's admissible leave. The punishment of forfeiture of the salary treating the period of absence as semi earned leave was itself a harsh punishment and the petitioner should not have been given further punishment of compulsory retirement. He submitted that the appellate authority

has also arbitrarily and mechanically disposed of the petitioner's appeal petition without any application of mind on the grounds of the appeal and the materials on record. It has been casually held that there was no ground worth considering. Rule 824 of the Bihar Police Manual provides a list of punishments in which the items at Serial Nos. (a) and (j) have been recorded as major punishments which include compulsory retirement being item No. (c). Rule 828 (b) provides that no order of dismissal, removal, compulsory retirement or reduction shall be passed against any police officer unless the delinquent has been informed in writing of the grounds and has been afforded an adequate opportunity of defending himself. Rule 826 provides that the punishment awarded should be in conformity with the gravity of offence with which the officer is charged and offences involving moral turpitude shall be carefully discriminated from smaller wrong doings. It has been clearly mentioned that it should also be borne in mind that the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding, shall not be taken into account for determining the quantum of punishment (Emphasis supplied). Rule 843 of the Bihar Police Manual provides punishment for absence without leave which runs as follows :

"Wilful overstaying of leave or absence from duty without leave shall be treated as misbehaviour and after obtaining the explanation of the officer concerned, proceedings shall invariably be drawn up and departmental punishment inflicted. If after explanation, it appears that a police officer had remained absent from duty due to any sufficient reason, he shall be granted leave admissible to him for that period. If it is proved that he has violated the rules at his own Will, he can be inflicted with any punishment as provided in Rule 824. The Police Officer who shall be absent from duty without permission shall be liable u/s 29 of Act V of 1861, as amended by Section 9 of the Act VIII of 1895. Such action however, should be taken only in special circumstances. As a rule whenever an officer does not return in time on duty, enquiries shall be made by the Superintendent/Commandant within one week from the S.P of his native district, and should there appear that the officer has not returned to his duties in time for good reasons he should be suspended and departmental proceeding should be undertaken as per Rule."

6. From joint reading of the Rules 826 and 843 of the Bihar Police Manual, it is clear that (i) the punishment awarded should be in conformity with the gravity of the offence; (ii) offences involving moral turpitude should be carefully discriminated from smaller wrong doings; (iii) the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding, shall not be taken into account for determining the quantum of punishment; (iv) wilful overstaying of leave or absence from duty without leave will be treated as misbehaviour and after obtaining the explanation from the officer concerned, proceedings shall be drawn up and punishment shall be inflicted; (v) if after explanation, it appears that a police officer had remained absent from duty due to any sufficient reason, he shall be granted leave admissible to him for that period; (vi)

if it is proved that he has violated the rules at his own Will, he can be inflicted with any punishment as provided in Rule 824.

7. Adverting to the impugned proceeding, I find that the earlier charge of overstaying and the then punishment given to the petitioner was not included in the subsequent charge. The petitioner was proceeded against for overstaying of only 38 days. The petitioner was put under suspension by order dated 11.11.2003 while the petitioner reported on duty on 6.12.2003. There is no question of absence from duty during the period of suspension i.e. from 3.11.2003 to 6.12.2003. The petitioner was on leave from 24.10.2003 to 28.10.2003 and he was to report on duty on 29.10.2003 and as such only after overstaying of leave for five days the petitioner was put under suspension with effect from 3.11.2003. The respondents while passing the impugned orders have not taken the same into consideration. The impugned orders have been passed on the basis of the charge of overstaying of 38 days which is itself erroneous. The respondents have also taken into consideration the previous service records, though the same were not included in the charge of the proceeding. The same is contrary to the provisions of Rule 843 of the Bihar Police Manual. The appellate authority has not at all considered the grounds taken in appeal petition and passed his order mainly on the basis of the previous record holding that the petitioner habitually overstayed the leave. There are medical documents and other documents to support the petitioner's explanation but the same have not been properly considered by the respondents. It has not been denied that the application for extension of leave was sent by the petitioner by post, but it has not been considered on the ground that the petitioner did not approach the Head Quarter in person to obtain the order of extension of leave. Rule 83 provides that if after explanation, it appears that a police officer had remained absent from duty due to any sufficient reason, he shall be granted leave admissible to him for that period and the punishment is to be inflicted only in the cases where it is proved that the delinquent has violated the rules at his own Will. Respondent No. 4 has arbitrarily rejected all the medical documents for not submitting the case memos of purchase of medicines whereas the petitioner had submitted the death certificate of his Badi Maa and the documents of investigation done in Uphar Seva Sadan and its Colposcopy Center, Sono-Echo Center and the reports of Ultra-sonographic consultation and other documents of the relevant period. The petitioner has also brought on record the copy of the application for extension of leave and the postal registration receipt. As aforesaid, receipt of application has also not been denied by the respondents. It appears from the records that the petitioner had to stay leave under the compelling circumstances firstly due to the death of his elder aunt (Badi Maa) and thereafter due to serious illness of his wife, which required immediate treatment. The petitioner produced sufficient records in support of the same but without giving due consideration, the respondents have inflicted the punishment of compulsory retirement. It is pertinent to mention that earlier for overstaying of leave about 192 days, the petitioner was awarded only a minor

punishment of a black mark, but this time the petitioner has been given punishment of compulsory retirement without any reasonable justification. The said punishment is thus unconscionable, excessive and disproportionate to the charge and the impugned orders of the respondents are arbitrary and violative of the Rules 826 & 843 of the Bihar Police Manual and the same are wholly unsustainable.

8. Normally in such, cases after the punishment order is found illegal and unsustainable, the matter is remitted to the disciplinary authority or the appellate authority who are competent to consider the facts and evidences. But keeping in view that the authorities have disclosed their mind on the material collected on record and that the petitioner has already suffered harassment and by remitting the matter back to the authorities would cause further delay, it is held and directed that the period of absence of the petitioner shall be adjusted against his admissible leave and if the petitioner is found short of leave, he shall be granted extraordinary leave without pay. The petitioner shall be allowed to join the post he was holding but for the period the petitioner has not worked, he will be paid 50% of his salary from the date of compulsory retirement till the date of his rejoining. There will be no discontinuity in the period of his service.

9. The impugned orders as contained in Annexures-4 & 6 of the writ application are quashed. This writ application is allowed in terms aforementioned.

There will be no order as to costs.