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**(2003) 10 JH CK 0017**

**Jharkhand High Court**

**Case No:** C.W.J.C. No. 1397 of 1996 (R)

Amrendra Narain Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** Oct. 13, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2004) 1 JCR 91

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** Prabhash Kumar, for the Appellant; Rajiv Ranjan Mishra, GP-II, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Tapen Sen, J.

Heard Mr. Prabhash Kumar, learned counsel for the petitioner and Mr. Rajiv Ranjan Mishra, learned GP-II for the State respondents,

2. The petitioner is aggrieved by the order as contained in Annexure 3 passed by the Superintendent of Police, Singhbhum (West) at Chaibasa whereby and whereunder the petitioner was dismissed from service. The petitioner is also aggrieved by the appellate order passed by the Deputy Inspector General of Police, South Chhotanagpur Range being the order issued on 14.12.1995 (Annexure 4) conforming the order of dismissal.

3. Evidently and as is apparent from the enquiry report that has been brought on record by the respondents themselves vide Annexure A in the counter affidavit of the respondent No. 3, the petitioner was proceeded against for the following offences :

- (a) for refusing to accept a command for being present on duty on 6.12.1991 on the occasion of Bharat Band;
- (b) for not being present and on duty on the arrival of Swami Shankaracharya; and
- (c) misbehaviour with one Mchiuddin, a personnel of the police department,.

4. The enquiry report discloses that for the offences in relation to 6.2.1991, it has been found that the petitioner refused to accept the command for being on duty. So far as this charge is concerned, there is a finding against the petitioner. So far as the other charge is concerned i.e. the one relating to visit of Swami Shankaracharya, the charge against the petitioner was that he was not on duty at 13.15 hours on 17.2.1991 (see the original order of dismissal as contained in Annexure 3). However, the enquiry report does not deal with it at all. On the contrary, the finding is that the petitioner did not go in the night patrolling duty on 17.2.1991 at 22.00 hours. Nothing has been said in relation to the charge i.e. not being present at 13.15 hours on 17.2.1991 for attending Swami Shankaracharya.

5. The charge-sheet has not been brought on record but from the order of the appellate authority, it is evident that the past character of the petitioner including his allegedly being addicted "to drugs and alcohol were taken into consideration for purposes of conforming the order of punishment although these charges were not included in the charge-sheet. Moreover, these three allegations are not even mentioned in the enquiry report because there is no discussion as to whether the petitioner's past character was bad or whether he was addicted to ganja or alcohol. Obviously therefore the order of the appellate authority who takes into consideration these allegations for purposes of conforming the order of punishment appears to be extraneous to the charge-sheet.

6. That apart, when a police officer is not on duty then an entry is to be made as per Rule 116(g) of the Bihar Police Manual, 1978 (now Jharkhand Police Manual). No such entry appears to have brought on record to prove the guilt of the petitioner as to whether he was really absent or not. Additionally, if the aforementioned charges are read together, what ultimately appears is that, the real offence alleged against the petitioner was not accepting the command/ refusing to accept the command for being on duty on 6.2.1991. The other charge in relation to the visit of Swami Shankaracharya at 13.15. hours on 17.2.1991 becomes doubtful because there is no discussion in the enquiry report about the same save and except to record that the petitioner did not accept the command for being in the night patrolling duty on 22.00 hours on 17.2.1991.

7. It appears therefore that the appellate authority has confirmed the order of dismissal in a mechanical manner and has proceeded to take into consideration charges which were not included in the charge-sheet. None of the parties before this Court have been able to demonstrate or establish that the charge- sheet included charges that the petitioner's conduct was bad and that he was addicted

to ganja and alcohol.

8. In that view of the matter, this Court has no option but to rely on the language used in the order of dismissal as also in the order of the appellate authority and in the enquiry report. Upon reading them together it is evident that these were not part of the charge-sheet. Additionally, before the appellate authority the petitioner took a specific plea to the effect that enquiry report was not given to him. In reply to the aforementioned specific plea of the petitioner all that the appellate authority has to say is that no such request was made by the petitioner.

9. Furnishing of a copy of the report does not depend on the asking for the same by the delinquent officer. It has to be supplied as a matter of course and as a matter of right. The appellate authority skirts the issue and does not specifically answer why the enquiry report was not given. All that is said is that such a demand was not made.

10. It therefore appears that both the officers who have passed the impugned orders have not applied their mind and have acted in a manner that is not permissible in Law. It is well known that no person can be punished for a charge that was not a part of the charge-sheet or for which he was not proceeded against. The appellate authority, by having taken into consideration additional charges, must therefore be said to be acted with material irregularity.

11. Additionally and as is apparent is that the main charge therefore which ultimately comes to the forefront is that the petitioner did not accept command on 6.2.1991. For such an offence the punishment of dismissal from service appears to be extremely harsh and disproportionate.

12. For all the reasons taken together, this Court is of the opinion that the order of dismissal was disproportionate and it is accordingly set aside.

13. The other reason for which this writ application must succeed is on account of non-furnishing of the enquiry report. Following the directions and guidelines of the Hon'ble Supreme Court of India in the judgment pronounced in the case of [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), the following directions are given :

(a) As a consequence of setting aside the order of dismissal and on account of non-furnishing of enquiry report, the petitioner will be reinstated in service and thereafter, the respondents shall be at liberty to proceed with the inquiry by placing him under suspension and continuing with the inquiry from the stage of furnishing him with a copy of the report.

(b) The question whether the petitioner would be entitled 10 back wages and other benefits from the date of his dismissal to the date of his reinstatement should be decided by the authority in accordance with law only after culmination of the proceedings and depending on the final outcome. If the petitioner succeeds in the

fresh inquiry and is directed to be reinstated, then the authority shall be at liberty to decide, in accordance with law, as to how the period from the date of dismissal till the reinstatement would be treated and as to what benefits, if any, to which he would be entitled.

(c) The reinstatement made as a result of setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement only for purposes of holding the fresh inquiry from the stage of furnishing the report and no more.

(d) It goes without saying that the petitioner must cooperate in the proceedings failing which it will be open to the respondents to pray for modification of this order by filing an application for review.

With the aforementioned observations and directions, this writ application is allowed. No order as to costs.