

(2011) 05 JH CK 0028

Jharkhand High Court

Case No: Writ Petition (S) No. 2873 of 2007

Ram Narayan Raman

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: May 6, 2011

Acts Referred:

- Jharkhand Police Manual - Rule 824, 834, 853A

Citation: (2011) 130 FLR 928

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Poonam Srivastav, J.

The the Petitioner challenges the order dated 21.12.2006 vide D.O. No. 537/06, passed by the Inspector General - cum-Director General of Police, Jharkhand, Ranchi whereby, the earlier order of punishment awarded to the Petitioner on 27.05.2002 by the Superintendent of Police, Padma, Hazaribagh has been enhanced after a lapse of four years. The punishment of compulsory, retirement is awarded by means of the the impugned order. The previous order of punishment was withholding increment of one year equivalent to two black marks.

2. The Petitioner was posted as a Constable, D.P.C. 50 in the JAP, Padma, Hazaribagh. On 13.01.2001, while on Santri duty, the Petitioner was found sleeping at 12:30 hrs. At the relevant time, magazine of rifle loaded with five round cartridge of Constable No. 132 Naresh Kumar was found missing in suspicious circumstances. The allegation was that theft occurred on account of negligence of the Petitioner and thereby he was charged for dereliction of duty. This was the first charge mentioned in the chargesheet. The second one was that Naresh Kumar asked the Petitioner to inspect his pocket which he refused and the third charge was that the

Petitioner did not make any attempt to search for the lost magazine and the cartridges.

3. After issuance of chargesheet, a regular inquiry was conducted and he was awarded the punishment of withholding of one increment for one year equivalent to two black mark. The Petitioner did not prefer an appeal and served out the sentence. After the period of punishment lapsed, he made representation for his promotion to the superior officer. The DIG, instead of granting any promotion, made a recommendation for enhancement of his punishment to the Director General of Police. Consequently, a show-cause dated 4th September, 2004 was issued by the D.I.G. (Budget) as to why he may not be dismissed from the service. A detailed reply was filed by the Petitioner but by means of the impugned order dated 21.12.2006, the Petitioner was awarded punishment of compulsory retirement.

4. Dr. S.N. Pathak, Sr. Advocate appearing for the Petitioner, has argued that the act of the Respondents awarding second punishment after the Petitioner had already served out first sentence amounts to double punishment which cannot be allowed to stand. The Respondents were not entitled to take action for enhancement of punishment after lapse of almost four years. If punishment was to be enhanced, it was to be done within a reasonable time, not after the delinquent have served out the sentence.

5. The Respondents' counsel has disputed his arguments and stated that since the Inspector General or the D.I.G. was not aware of the punishment order passed by the S.P. Hazaribagh, no action for enhancement could be taken earlier and this delay alone could not minimise the extent of delinquency of the Petitioner and, therefore, the order of enhancement of punishment cannot be interfered in exercise of writ jurisdiction.

6. Rule 853A(a) of the Jharkhand Police Manual provides that the "Inspector-General may call for the file in any case even when no appeal lies and pass such order as he may deem fit. The Deputy Inspector General may call for any file but he should refer it to the Inspector General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding".

7. Learned Counsel has placed reliance on a decision in the case of V.S. Reddy v. Union of India, and Ors. and analogous case, reported in 2001(1) PLJR 133 wherein it was held that where a delinquent is allowed to serve punishment awarded to him earlier, the reviewing authority passes an order after considerable lapse of time, it cannot be left to stand since the second order of punishment amounts to imposition of punishment twice for the same charge.

8. The counsel appearing on behalf of the Respondents has also cited two decisions of the Apex Court where the Court held that even in cases so falling within the scope of judicial review, normally the disciplinary authority or the Appellate Authority

should be directed to reconsider the penalty imposed and only in exceptional cases, in order to shorten litigation, the Court may pass appropriate speaking order. Interference by the Court in a disciplinary proceeding has also been decried in another decision in the case of [State of Meghalaya and Others Vs. Mecken Singh N. Marak,](#).

9. After hearing the respective counsels and also taking into consideration the pleadings exchanged by the learned Counsel, I have examined various provisions of the Police Manual. Rule 824 of the Jharkhand Police Manual prescribes punishment which includes black mark or forfeiture of increment as well as punishment of compulsory retirement.

Rule 834 deals with the Black Marks. For ready reference, Rule 834 (a) and (b) is quoted as under:

834. Imposition of black marks. - (a) As forfeiture affects pension, black marks may be awarded in appropriate cases to all officers of and below the rank of Inspector and to all ministerial officers of the department Not more than one black mark shall be awarded for any one offence except when moral turpitude can reasonable be inferred.

(b) Three black marks shall ordinarily entail forfeiture or Withholding, of an increment, the period of which shall be specified in the order and after the period is over, the officer will be restored to his former position. Such forfeiture or withholding of an increment shall not carry any black mark value.

10. On perusal of the aforesaid Rule, evidently it transpires that one black mark shall be awarded for one offence except when moral turpitude can be reasonably inferred and three black marks shall entail forfeiture and withholding of one increment.

11. In the instant case, the charge is that the delinquent was found sleeping during duty hours which resulted in theft of a magazine and live cartridges belonging to a constable. But there is no FIR of theft having been committed by the Petitioner or any criminal proceedings initiated against him therefore, cannot be included within the ambit of moral turpitude.

12. The Petitioner was awarded two black marks and withholding of one increment which the Petitioner had served out and according to Rule 834(b), after the period for which the punishment order was passed, he was entitled to be restored to his former position. Besides, Sub-clause (b) of Rule 834 provides that withholding of an increment shall not carry any black mark value. But in the instant case, two black marks along with withholding of increment for one year was awarded. Admittedly, the Petitioner served out and therefore, the subsequent enhancement of punishment awarding compulsory retirement, is nothing short of double jeopardy.

13. The Petitioner made a representation after he was entitled for being restored to his original position. The Respondents, instead of following the procedure laid down in Clause (b) of the aforesaid Rule, issued a show-cause notice for a compulsory retirement and passed the second order of punishment. The procedure adopted by the reviewing authority was not only unwarranted by the Rules but evidently uncalled for and appears to be arbitrary and ultravires of the aforesaid Rule.

It is a case where the Petitioner has been subjected to compulsory retirement since the year 2006 and, therefore, in my view, remanding the matter to the disciplinary authority is not justified in the facts and circumstances of the present case.

14. In my opinion it is a case where the Petitioner was already subjected to punishment and this was done after going through a complete inquiry. The Petitioner submitted to the order of punishment and after lapse of the period of punishment, he was entitled for being considered for promotion or to be given his due weightage during the service period. The show-cause was issued for dismissal which is evidently not in proportion with the act of delinquency. It is not a case where the stolen magazine and the cartridges were recovered from him or there was even an allegation that he conspired with the actual accused who committed the offence and, therefore, the awarding of second punishment i.e. compulsory retirement on the face of it is unreasonable and on the anvil of administrative law it is a case shocking to judicial conscience. Therefore, interference in the instant writ petition is essential as it is the Petitioner who is deprived of his service since the year 2006 and if the matter is remanded to the disciplinary authority or the appellate authority, it will only cause further prejudice to the Petitioner and lengthen litigation. The second show-cause was admittedly issued after a lapse of four years and the only explanation given by the counsel on behalf of the Respondents is that the DIG or the I.G. Were not aware about the order of punishment. This cannot be accepted as a good explanation for the delay of four years. This period cannot be said to be a reasonable period and, therefore, the order impugned is vitiated.

15. In view of what has been stated above, the order of compulsory retirement is hereby quashed. The writ petition is allowed and the Petitioner shall be permitted to join his duty within a period of three weeks from the date of receipt/production of a copy of this order.