

**(2014) 12 JH CK 0031**

**Jharkhand High Court**

**Case No:** W.P. (S) No. 5123 of 2010

Mahali Oraon

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** Dec. 12, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2015) 1 JLJR 342

**Hon'ble Judges:** Sujit Narayan Prasad, J

**Bench:** Single Bench

**Advocate:** Krishna Shankar, Advocate for the Appellant

### **Judgement**

Sujit Narayan Prasad, J.

The petitioner, being aggrieved with the order dated 31.3.2010 passed by the disciplinary authority, by which he has been dismissed from service and the appellate order dated 5.7.2010 upholding the order of dismissal, has approached this Court.

2. It has been submitted by learned counsel appearing on behalf of the petitioner that the petitioner has been appointed as Constable and posted at Tiger Mobile in the district of Dhanbad, a charge-sheet has been issued against him with respect to commission of irregularity i.e. in the drunken stage he has shown Government revolver towards a Police Constable, as such he has committed gross indiscipline. It has been submitted on behalf of the petitioner that the charge itself is illegal because the charge has been levelled with respect to drunk ness of the petitioner while on duty but no medical examination by taking sample of blood and urine has been done and charge has been framed.

3. It has further been submitted that the petitioner has been dismissed from service without any reason and without ascertaining the fact as to whether he was in drunken stage or not.

4. On the other hand, learned counsel appearing on behalf of the respondents-State has submitted that the petitioner has committed gross irregularity by reaching the office in drunken stage. The petitioner, being a member of disciplined Force, cannot come in the office in drunken stage. It has further been pointed out that in the drunken stage he has pointed Government revolver towards one Police Constable. Thus, due to the conduct of the petitioner the image of the Police has deteriorated. It has been submitted that after full-fledged departmental enquiry the Enquiry Officer has come to the conclusion that the petitioner was in drunken stage and he has pointed the Government revolver towards the Police Constable. It has further been submitted that the fact with respect to drunk ness of the petitioner has been corroborated by the medical examination of the petitioner and, as such, the authorities have rightly come to the conclusion of dismissing the petitioner from service. It has further been submitted that the appellate authority has also considered all aspects of the matter and thereafter the appellate order has been passed. Since the petitioner has been provided all opportunities of being heard, hence the order needs no interference.

5. Heard the parties.

6. Admittedly, the petitioner is a member of disciplined Force. From perusal of the allegation levelled against the petitioner it is apparent that the petitioner has been dismissed from service since he has reported the office in drunken stage. The physical position of the petitioner was corroborated by the medical examination which has been done by the Medical Officer. The Enquiry Officer, after considering the evidence and the statement of witnesses, has come to the conclusion that the charge which has been levelled against the petitioner, has been proved. The disciplinary authority, after accepting the same, has passed the dismissal order. The appellate authority has also provided all opportunities to the petitioner of being heard and thereafter has upheld the order of dismissal.

7. Since there is concurrent findings of two authorities, this Court cannot interfere and substitute its own independent findings. The Hon"ble Apex Court in B.C. Chaturvedi Vs. Union of India and others, held that the court in its power/judicial review does not act as an appellate authority and reappreciate the evidence and arrive at its own independent findings on the evidence. The relevant portion of this case at paragraphs-12 and 13 are quoted herein below:--

"12. .... When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusion are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that

evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant."

8. The same settled proposition of law has been reiterated by the Apex Court in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, wherein at para-20 it has been held that:--

"20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority."

9. Further, in the case of State of U.P. and Others Vs. Raj Kishore Yadav and Another, at para 4 as follows:

"..... It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed."

10. In view of the settled proposition of law, this Court sitting under Article 226 of the Constitution of India cannot reappreciate the evidence and sit like an appellate Court. As such the impugned order needs no interference, this writ petition is hereby dismissed.