

(2016) 09 JH CK 0055

JHARKHAND HIGH COURT

Case No: Writ Petition (S) No. 453 of 2006

Satyaram Pandey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 30, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 AIRJharR 804

Hon'ble Judges: Mr. Pramath Patnaik, J.

Bench: Single Bench

Advocate: Mr. Manoj Tandon, Advocate, for the Petitioner; Mr. Chanchal Jain, J.C. to A.A.G, for the Respondent/State

Final Decision: Dismissed

Judgement

Pramath Patnaik, J. - In the instant writ application, the petitioner has, inter alia, prayed for quashing/setting aside the order dated 30.10.2001, passed by the Respondent No. 4, i.e. the Superintendent of Police, Giridih in the Departmental Proceeding No. 79 of 1998 pertaining to punishment of placement in the initial pay scale, payable to the newly recruited constables with a further direction that the petitioner will not be entitled for any amount, save and except, what he has been paid during the period of suspension and for quashing the order dated 04.08.2004, passed by the Appellate Authority i.e. the Deputy Inspector General of Police, North Chhotanagpur Area, Hazaribagh, rejecting the appeal preferred by the petitioner and for a direction to the respondents to pay all consequential service benefits.

2. The brief facts, as emanated from the writ application, is that while the petitioner was continuing as a Constable, a departmental proceeding was initiated against him on 13.11.1998 by the then Superintendent of Police, Giridih on the allegation that on 06.10.1998, at 17:15 hours, the petitioner in presence of other Police Officer, literate constables and Chaukidars, misbehaved with the then Officer-in-Charge, showing

indiscipline by removing his own sandals from his legs and threatened the Officer-in-Charge even with a piece of brick, as evident from the memo of charges (Annexure-1 to the writ petition). Thereafter, the Enquiry Officer was appointed to conduct the enquiry. During enquiry, the witnesses were examined but the said enquiry was conducted without any information to the petitioner of the date fixed for the enquiry but, when the Sub-Inspector Dharamdeo Paswan is said to have been examined in the departmental proceeding, the petitioner was noticed and was present in the proceeding. However, the deposition of the said Dharmdeo Paswan was not recorded in presence of the petitioner but his statement was recorded, not by the Enquiry Officer, but by the Literate Constable at some other place and not at the assigned place of enquiry i.e. the Policeline, Giridih and the petitioner was not given chance even to cross-examine the said witnesses. It has further been asserted in the writ application that the other witnesses like Literate Constable, Shyam Nandan Kishore and the Assistant Sub-Inspector, Dindayal Ram were examined on 12.08.2000 in presence of the petitioner but their statements was recorded by the Literate Constable of the enquiry officer and not by the enquiry officer himself. The petitioner was asked to submit his explanation and the petitioner has requested the enquiry officer for supply of relevant papers as evident from Annexure-5 to the writ petition. Thereafter, the petitioner submitted his written statement of defence, denying the allegations. In the written explanation, the petitioner stated that he was granted leave by the Dy. S.P., Head Quarter for 5 days, as because the petitioner was required to attend the funeral ceremony of the sad demise of his brother-in-law (Bahnoi), who died prematurely at early age of 35 years only but on the alleged date i.e. 16.10.1998, when the petitioner asked for formal permission from the then Officer-in-Charge, he lost his temper and manufactured a different story with a view to victimise the petitioner as per Annexure-6 to the writ petition. The Enquiry Officer submitted his enquiry report to the disciplinary authority, holding the petitioner guilty of the charges, as evident from Annexure-7. The copy of the enquiry report was supplied to the petitioner by the Superintendent of Police, Giridih by which the petitioner was asked to submit his written statement in defence and the petitioner submitted his defence and thereafter, the Superintendent of Police, Giridih without appreciating the written statement, punished the petitioner by placing him in the initial pay-scale of the newly recruited Constable in the departmental proceeding No. 79 of 1998 vide Annexure-12 to the writ application. Being aggrieved by the order of the disciplinary authority, the petitioner preferred appeal before the Deputy Inspector General of Police, Hazaribagh. Since the said appeal was not disposed of, the petitioner filed W.P. (S) No. 5462 of 2004, which was disposed of on 08.10.2004. In pursuance to the order dated 08.10.2004, the petitioner submitted representation before the Respondent No. 4 along with the copy of the order dated 08.10.2004, passed in W.P. (S) No. 5462 of 2004. Appeal preferred by the petitioner was rejected vide order dated 04.08.2004 (Annexure-15 to the writ petition) during the pendency of the aforesaid writ petition. Being aggrieved by the order passed by the Disciplinary Authority, dated 30.10.2001 and the order of the appellate authority,

dated 04.08.2004, the petitioner left with no other efficacious, alternative and speedy remedy, has been constrained to approach this Court invoking the extraordinary jurisdiction under article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner during course of hearing, has vehemently submitted that the impugned orders have been passed by the disciplinary authority without following the principles of natural justice and during course of enquiry, three witnesses were examined behind the back of the petitioner by the enquiry officer and the notices for the dates of enquiry was not served upon the petitioner and therefore, the impugned order is liable to be set aside. Learned counsel for the petitioner further submits that the impugned order of punishment, passed by the disciplinary authority being confirmed by the appellate authority is too harsh and disproportionate to the gravity of the charges and is liable to be set aside. Learned counsel for the petitioner also submits that Rule 824 of the Police Manual does not envisage the impugned order of punishment. Learned counsel for the petitioner further submits that the averments made in paragraph 9, paragraph 10, paragraph 17 and paragraph 27 onwards stands admitted in view of non-denial of the assertions made therein. So far as on the question of quantum of punishment, learned counsel for the petitioner has referred to and relied upon the following decisions of the Hon"ble Apex Court :-

(i) in the case of **State Bank of Mysore & Others v. M.C. Krishnappa reported in (2011) 7 SCC 325** and

(ii) in the case of **S.R. Tewari v. Union of India & Another reported in (2013) 6 SCC 602**

4. Per contra, a counter affidavit, controverting the statements made in the writ application, has been filed by the Respondent No. 4.

5. Learned J.C. to A.A.G. for the Respondent-State has reiterated the averments made in the counter affidavit. During course of hearing, learned counsel for the Respondent-State by referring to paragraph 19 of the counter affidavit, has vociferously submitted that the departmental proceeding no. 79 of 1998 was initiated against the petitioner for a irresponsible, in disciplined behaviour, which was thoroughly uncalled for, of a police constable. The petitioner was given sufficient opportunity to defend himself and to remain present during the conduction of the departmental proceedings, but he remained non-cooperative and he remained wilfully absent sometimes. The conducting officer despite the non-cooperative attitude of the petitioner, conducted the proceeding properly and found the petitioner guilty of the charges and the disciplinary authority i.e. the Superintendent of Police, Giridih (Respondent No. 4), passed the final order on the basis of the findings submitted by the conducting officer and the appellate authority on perusal of the impugned order, passed by the disciplinary authority, found it to

be justified and thereby dismissed the appeal of the petitioner vide memo no. 1233, dated 04.08.2004, therefore, the learned counsel for the Respondent-State submits that the writ application is not maintainable either in law or on facts and is liable to be dismissed.

6. Having heard the learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has not been able to make out a case for interference due to the following facts, reasons and judicial pronouncements:-

(i) In the case in hand, departmental proceeding no. 79 of 1998 was initiated on the allegation that the petitioner on 06.10.1998, at 17:15 hours, in presence of other Police Officer, literate constable and Chaukidars, misbehaved with the then Officer-in-Charge, showing indiscipline by removing his own sandals from his legs and threatened the Officer-in-Charge even with a piece of brick, as evident from the memo of charges (Annexure-1) and the charges against the petitioner being in a disciplined force, is very serious and grave in nature

(ii) The petitioner has been given opportunity of filing explanation to the alleged charges and he submitted his explanation and on the basis of the alleged charges, the matter was enquired into by the enquiry officer and in the enquiry, the charges against the petitioner have been proved .

(iii) Thereafter, the petitioner was asked to give his explanation on the enquiry report and he submitted his explanation on the enquiry report and the disciplinary authority on the basis of the findings of the enquiry officer, has passed the impugned order of punishment of lowering to the initial pay-scale, which has been confirmed by the appellate authority.

(iv) Therefore, from the initiation of the charge till its finalization, all procedural formalities have been adhered to by the disciplinary authority and the petitioner has been found guilty of the alleged charges, therefore, in view of the seriousness of the allegation and the misconduct committed by the petitioner, the power of judicial review cannot be even remotely applied and moreover the fact finding given by the two competent authorities based upon the material on record cannot be re-appreciated and re-apprised and interfered with, as has been held by the Hon'ble Apex Court in the case of **State of Uttar Pradesh and Another v. Man Mohan Nath Sinha & Another as reported in (2009) 8 SCC 310**, specially at paragraph 15, which is quoted herein below:

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions ♦♦♦"

(v) So far as the question of alleged quantum of punishment, there is absolutely no quarrel over the settled proposition, as has been enunciated by the Hon"ble Apex Court but the facts of the present case is totally distinguishable, as the aforesaid decisions relied upon by the learned counsel for the petitioner are not applicable, since the findings recorded by the enquiry officer on the allegations of misconduct has been proved during enquiry and therefore the punishment does not appear to be excessive, harsh and shockingly disproportionate so as to warrant any interference by this Court.

7. In view of the aforesaid reasons stated in the foregoing paragraphs, the impugned order dated 30.10.2001, passed by the Respondent No. 4, i.e. the Superintendent of Police, Giridih in the Departmental Proceeding No. 79 of 1998 as well as the order dated 04.08.2004, passed by the Appellate Authority i.e. the Deputy Inspector General of Police, North Chhotanagpur Area, Hazaribagh do not warrant any interference by this Court.

8. Accordingly, the instant writ petition sans merit, is hereby, dismissed.