

(2016) 08 JH CK 0128

JHARKHAND HIGH COURT

Case No: Writ Petition (S) No. 1201 of 2006

Braj Bhushan Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Aug. 12, 2016

Citation: (2017) 1 AIRJharR 149 : (2017) 1 JBCJ 136 : (2016) 4 JCR 631 : (2017) 2 JLJR 613

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

Bench: Single Bench

Advocate: Mr. Chanchal Jain, J.C. to A.A.G, for the Respondents; Mr. Saurabh Shekhar, Advocate, for the Petitioners

Final Decision: Allowed

Judgement

Pramath Patnaik, J. - In the accompanied writ application, the petitioners have inter alia prayed for quashing of the common orders dated 31.10.2004 issued by the respondent no.5, pertaining to punishment of compulsory retirement from services, and for quashing the common orders dated 08.10.2005 issued by the respondent no.4 (appellate authority), affirming the order of the disciplinary authority, and for direction to the respondents forthwith reinstate the petitioners in services and for direction upon them to release all consequential benefits along with interest.

2. The facts as disclosed in the writ application, in a nut shell, is that the petitioners were deputed on patrolling duty in a passenger train in between Tata and Barkakana on 06.06.2001. The petitioner nos.1, 2, 3 and 4 joined their services on 06.07.1979, 27.02.1989, 11.07.1985 and 01.12.1988 respectively. It has been stated in the writ application that when the train reached near Harubera Station in night, all of a sudden the train was stopped. When the petitioners came down from the train to enquire into the matter about 100 to 150 persons surrounded these four police personnel. On being surrounded, one of the petitioners being petitioner no.1 fired from his service rifle after taking position. In retaliation, the extremists started fire upon them and even assaulted from the butt of the rifle and stabbed them. Thereafter, the extremists directed the railway driver to come out from the engine

and stand on some distance from the engine, till they have again been instructed to come to engine. On the said night, the extremists took away the rifles from these petitioners and after assaulting they fled away. After the incident, the petitioners were hospitalized for some days. In pursuance to the said incident on 07.06.2001, a police case being Rail P.S. Muri No.07/2001 under Section 395, 397 of the Indian Penal Code and 17 of C.L.A. Act has been instituted. The Superintendent of Police, Railway filed his supervision note indicating that the incident has taken place, is known for the extremists activities. After the supervision note of the S.P., ultimately the criminal case has been closed by the order of the Superintendent of Police, Railway dated 31.08.2003 on the ground that there is no possibility of any cause, which can help in probing into the investigation, as evident from Annexure-2 to the writ application. Thereafter, a show cause notice was issued to the petitioners on 07.08.2001 directing them to reply with respect to the factum of incident relating to dereliction of Government duty. Pursuant to the said show cause notice, the petitioners submitted their replies denying the whole incident. Thereafter, memo of charges were issued against the petitioners under the signature of respondent no.5 alleging dereliction of duty and inability of police personnel and directed the petitioners for submission of reply. The petitioners were served with second show cause notice. The petitioners requested for providing some time to file reply for the second show cause notice. The disciplinary authority vide order dated 31.10.2004 has been pleased to pass order of compulsory retirement. Being aggrieved by and dissatisfied with the order of the disciplinary authority, the petitioners preferred appeal before the appellate authority i.e. Deputy Inspector General of Police, Ranchi against the order dated 31.10.2004 and vide order dated 08.10.2005, the Deputy Inspector General of Police, Ranchi affirmed the order of punishment of compulsory retirement. Being aggrieved by the impugned orders, the petitioners have approached this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of their grievances.

3. Mr. Saurabh Shekhar, learned counsel for the petitioners during course of hearing has strenuously urged that the impugned orders are fit to be set aside on the ground that the punishment of compulsory retirement have been imposed upon the petitioners by the respondents are illegal and arbitrary because the findings are contrary to the enquiry report being cryptic and perfunctory one and no definite or clinching evidence has come against the petitioners to award such punishment. Learned counsel for the petitioners further submits that the punishment imposed on the petitioners is a major punishment, which is not commensurate with the offence, if any committed by them, because of the reason that if any offence has been committed by the petitioners the other persons who have been empowered for investigating the case, they should have been given punishment for the failure of not arresting the extremists. Learned counsel for the petitioners further submits that disciplinary authority have not considered the unimpeachable services of the petitioners of about 16-17 years and by virtue of the impugned order of

punishment, the petitioners have been put to starvation. Learned counsel for the petitioners further submits that non-supply of the enquiry report is another infirmity, which has caused prejudice to the petitioners because the supply of enquiry report is a sine qua non for fair of the full-fledged disciplinary proceeding. In the instant case, due to non supply of the enquiry report, disciplinary proceeding has been vitiated. Learned counsel for the petitioners further submits that co-delinquent-Mr. Shiv Lakhman Pandey, who had initially inflicted lesser punishment of reversion to the lower post from the post of Assistant Sub Inspector of Police, has been modified by the appellate authority vide order dated 25.06.2011 (Annexure-19) restricting the period of reversion of one year. Learned counsel for the petitioners submits that petitioners are entitled to the same benefit as has been extended to the co-delinquent, since the petitioners have been given compulsory retirement, they have been subjected to hostile discrimination and therefore, they are entitled to parity of treatment as per the settled principles of law.

4. Mr. Chanchal Jain, J.C. to A.A.G., appearing for the State has reiterated the submissions made in the counter affidavit. During course of hearing, learned counsel for the State has assiduously brought attention of this Court to the supplementary counter affidavit filed on behalf of respondent no.5, wherein at paragraph 4 to 9, it has been submitted that adequate opportunities have been given to the petitioners, but the petitioners failed to take the benefit of opportunities given to them and there has been no procedural irregularity so far as disciplinary proceeding is concerned. Learned counsel for the State further submits that on perusal of the enquiry report and after taking evidence of the witnesses, the disciplinary authority has inflicted punishment of compulsory retirement, which is justified and the order of punishment does not require any interference by this Court under Article 226 of the Constitution of India.

5. After hearing learned counsel for the respective parties and after bestowing my anxious consideration to the rivalized submissions and on perusal of the record, it appears that the petitioners have been able to make out a case for interference due to the following facts, reasons and judicial pronouncements:

(I) Admittedly in the case in hand, on the fateful night i.e. 06.06.2001, there was an attack by the extremists at about 8.40 p.m in the passenger train running between Tata and Barkakana. When the train reached near Harubera Station, all of a sudden the train has been interrupted and stopped. Thereafter, the extremists entered into the train and looted the arms and ammunitions from the petitioners after assaulting them. Thereafter, police case was instituted and supervision note has been given by the Deputy Superintendent of Police. On the allegation of dereliction of duty, charge sheet was issued against the petitioners and the petitioners submitted their replies to the show cause. The matter was enquired into and the enquiry report was submitted. Thereafter, second show cause was issued and the order of compulsory retirement was passed, which has been affirmed by the appellate authority. But, in

the instant case, the copy of the enquiry report was not supplied to the petitioners, which have caused gross prejudice to the petitioners because the enquiry report is a sine qua non for fair, transparent and full dressed departmental proceeding. Non-supply of enquiry report prevented the petitioners to put forth their defence before the enquiry officer, therefore, there have been procedural irregularity in the conduction of the departmental enquiry.

(II) From perusal of the record, it appears that prior to infliction of punishment of compulsory retirement, all the petitioners rendered about 15- 17 years of meritorious and unimpeachable services but by virtue of the order of punishment, the petitioners have been put to untold misery and irretrievable injustice. On perusal of the enquiry report, it appears that no clinching incriminating material have been found against the petitioners, so as to reach the conclusion of apportioning the blame of the petitioners, which can point fingers towards dereliction of duty. However, the petitioners also cannot be said to have performed the duty as expected from a police personnel of the discipline force, but, the fact which should not be lost sight of that the petitioners have not fled from the incident that would show from the time of incident, perhaps they were over powered by the sizable number of extremists. In that situation, they were left to fight those extremists but in a similar situation also another co-delinquent Shiv Lakan Pandey, who was Head Constable, against whom there was same charge, inflicted with reduction to the lower rank for a period of one year as evident from Annexure-19 to the supplementary affidavit. In this regard, it would be profitable to refer to a decision rendered by the Hon'ble Apex Court in the case of **Rajendra Yadav v. State of Madhya Pradesh and Others as reported in (2013) 3 SCC 73**, in particular paragraph 9, which is quoted herein below:

"9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."

(III) From the aforesaid facts, so far as non-supply of the inquiry report is concerned now at this belated stage and after almost elapse of more than 15 years it would not be in the interest of justice to start the proceeding from that stage. Therefore, in the interest of justice, the matter can be remitted on the question of quantum of punishment, considering the similar nature of allegations and findings of the inquiry officer against co-delinquent.

6. In view of the reasons stated herein above and as a logical sequitur to the impugned order of punishment of compulsory retirement dated 31.10.2004 passed by the disciplinary authority as well as the order dated 08.10.2005 passed by the appellate authority, are quashed and set aside and the respondents are directed to take decision on the reinstatement of the petitioners, and pass appropriate orders on the quantum of punishment within a period of eight weeks from the date of receipt of a copy of this order.

7. With the aforesaid direction, this writ petition is allowed.