
(2017) 02 JH CK 0191
JHARKHAND HIGH COURT
Case No: 2769 of 2014

Pankaj Srivastava

APPELLANT

Vs

Anjana Srivastava

RESPONDENT

Date of Decision: Feb. 8, 2017

Acts Referred:

- Constitution of India, Article 226 -
- Jharkhand Police Manual, Rule 852

Hon'ble Judges: Pramath Patnaik

Bench: SINGLE BENCH

Advocate: Diwakar Upadhyay, Rakesh Kumar Roy, Varun Prabhakar, Chanchal Jain

Judgement

1. In the accompanied writ application, the petitioner has sought for issuance of writ of certiorari for quashing the order dated 26.06.2012 (Annexure-5), passed by the Commandant, JAP-10, Mahila Battalion, Hotwar, Ranchi and the order dated 19.12.2013, passed by the Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi (Annexure-7) pertaining to infliction of punishment of forfeiture of one year increment without cumulative effect, which is equivalent to two black marks, which has been reduced to one black mark by the order of the appellate authority vide Annexure-7.

2. Sans details, the facts as disclosed in the writ application are that, when the petitioner was posted in Mahila Battalion, JAP-10, Hotwar, Ranchi, as Constable, allegations were leveled against the petitioner on the ground that the petitioner was absent on three occasions of the assembly and availed the facilities of visiting the market as evident from Annexure-1 to the writ application. In pursuance to the aforesaid charges, the petitioner submitted his reply denying the charges. Thereafter, a Departmental Enquiry bearing No. 09 of 2012 was initiated against the petitioner and the enquiry officer was appointed to conduct the enquiry and the Enquiry Officer submitted his report. The Enquiry Officer

after thorough enquiry into the matter exonerated the petitioner from some charges and held the petitioner guilty for other charges. Thereafter, the Disciplinary Authority without issuance of the second show cause, passed the order of punishment dated 26.06.2012 (Annexure-5) forfeiting one year increment without cumulative effect tantamounting to two black marks. Being aggrieved by the order of the disciplinary authority, the petitioner preferred appeal before the Appellate Authority and the Appellate Authority on consideration of the grounds taken by the petitioner and on consideration of the alleged misconduct, has reduced the quantum of punishment up to two black marks to one black mark. Being aggrieved by the aforesaid orders of the disciplinary authority as well as the appellate authority, the petitioner left with no alternative and efficacious remedy, has approached this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

3. Mr. Diwakar Upadhyay, learned counsel for the petitioner has submitted with vehemence that the impugned orders of punishment vide Annexures-5 and 7 to the writ application are not legally sustainable on the ground that the impugned orders of punishment have been passed without issuance of second show cause notice and without complying to the provisions of Rule 826 of the Police Manual. Learned counsel for the petitioner further submits that though the enquiry officer has submitted a vague and confusing report, on the one hand, he has exonerated the petitioner from the charges and on the other hand, he has found the petitioner guilty of the charges. The Enquiry Officer has blown hot and cold at the same time, so on the basis of this perverse finding by the Enquiry Officer, the impugned order of punishment vide Annexures-5 and 7 could not have been passed. Learned counsel for the petitioner further submits that considering the gravity of charges, the impugned order of punishment is grossly disproportionate to the proved misconduct.

4. A counter affidavit has been filed on behalf of the respondents controverting the averments made in the writ application.

5. As against the submissions of the learned counsel for the petitioner, Mr. Chanchal Jain, learned J.C. to A.A.G. appearing for the Respondent-State has assiduously brought the attention of the court to the first and the second part of the charge and has referred to the findings of the Enquiry Officer. Learned counsel for the Respondent- State has submitted that on perusal of the enquiry report, it would be crystal clear that the petitioner has not been exonerated fully from the charges, so the charges levelled against the petitioner has been partly proved. Learned counsel for the Respondent-State further submits that moreover, the appellate authority under Rule 852 of the Police Manual, taking into consideration the gravity of the charges, proved misconduct, has taken a lenient view and has reduced the order of punishment from two black marks to one black mark and therefore, the case does not require any interference by this Court under Article 226 of the Constitution of India.

6. After hearing the learned counsel for the respective parties and on perusal of the records, I am of the considered view that the impugned order of punishment vide Annexure-5 and 7 do not warrant any interference by this Court on the following grounds :

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(i) Admittedly, the charges against the petitioner being in a disciplined force, are very grave and from the initiation of the proceedings till its culmination, the petitioner has been afforded with adequate opportunity of defending herself. Though, the punishment of infliction of two black marks is a major punishment as per Rule 828 of the Police Manual and in case of infliction of major punishment, second show cause ought to have been issued, but on the ground of failure of issuance of second show cause notice, no ground of prejudice has been whispered in the writ application.

(ii) Of course, there has been breach of the principles of natural justice by non-compliance of issuance of second show cause notice but considering the gravity of charges, the findings of the Enquiry Officer and the quantum of punishment, the impugned orders vide Annexure-5 and 7 do not call for any interference. The view of this Court gets fortified by the decision of the Hon"ble Apex Court rendered in the case of State of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another reported in (2009) 8 SCC 310, specially at paragraph 15, wherein, the Hon"ble Apex Court has been pleased to inter alia, hold as under:

"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 reappraise 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....."

7. Therefore, in view of the reasons stated in the foregoing paragraphs and as a logical sequitor to the aforesaid reasonings, the impugned order is commensurate with the findings of the Enquiry Officer and the punishment order appears to be just and proportionate to the gravity of the charges, therefore, the impugned orders do not warrant any interference by this Court on the ground of doctrine of proportionality. Hence the impugned orders vide Annexure-5 and 7 to the writ application cannot be set at naught. Resultantly, the writ petition being devoid of any merit, is hereby dismissed.