

Santu Kumar Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jan-18-2017

Appellant : Santu Kumar

Respondent : The State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Diwakar Upadhyay

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3703 of 2014
----- Santu Kumar, son of Late Binod Singh, resident of Village- Barath, P.O-
Bajnathpur, P.S. Sitamarhi, District-Nawadah, Bihar ... Petitioner Vs. 1.The State
of Jharkhand 2.Director General-cum-Inspector General of Police, Jharkhand,
Ranchi. 3.D.I.G, Singhbhum (Kolhan) Area, Chaibasa, District- Singhbhum West.
4.Senior Superintendent of Police, Singhbhum East, Jamshedpur, District-
Singhbhum East. 5.Superintendent of Police, Singhbhum East, Jamshedpur,
District-Singhbhum East. ... Respondents ----- CORAM: HONBLE MR. JUSTICE
PRAMATH PATNAIK ----- For the Petitioner : M/s Diwakar Upadhyay & Varun
Prabhakar, Advocates. For the Respondents : Mr. Chanchal Jain, J.C to A.A.G
----- 07/ Dated:

18. h January, 2017 Per Pramath Patnaik, J.: In the instant writ application, the
petitioner has inter alia prayed quashing order as contained in memo dated
27.05.2010 passed by the disciplinary authority i.e. Senior Superintendent of
Police pertaining to removal from services and also the appellate order dated

15.03.2013, whereby the appellate authority i.e. the Deputy Inspector General of Police (Kolhan) Area, Chaibasa rejected the appeal preferred by the petitioner and further prayer has been made for direction upon the respondents to reinstate the petitioner in services with all consequential benefits.

2. The brief facts, as disclosed in the writ application, is that while the petitioner was discharging his duties, a memo of 2 charge dated 14.03.2008 was served upon the petitioner alleging that on 14.11.2007 while the petitioner being posted as Bodyguard of A.D.C, Jamsdedpur, he left his duty for home without handing over his pistol in safe custody rather he left key of the box in his barrack where he kept his pistol and further neither he obtained permission for leave nor did he give his joining report. Even on return to his barrack, when he found his pistol missing he did not report the matter and absented himself from 27.11.2007 to 28.11.2007 and on 28.11.2007 lodged information to this effect being Golmuri P.S. Case No. 381 of 2007. Pursuant thereto, the petitioner submitted show cause reply denying the charges levelled again the petitioner. However, the enquiry officer basing on the materials available on record found the petitioner guilty of the charges. Thereafter, second show cause notice was served upon the petitioner, to which, the petitioner replied and after consideration of the reply to second show cause notice, the impugned order of removal from services dated 27.05.2010 was passed. Being aggrieved, the petitioner petitioner preferred appeal, which was dismissed vide order dated 15.03.2013.

3. Being aggrieved by the order dated 27.05.2010 passed by the disciplinary authority as well as order dated 15.03.2013 passed by the appellate, the petitioner left with no alternative, efficacious and speedy remedy has approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievances. 3 4. Mr. Diwakar Upadhyay, learned counsel for the petitioner submits that impugned order of punishment has been passed without considering the reply submitted by the petitioner and without considering the unblemished service career of the petitioner. It has further been submitted that petitioner has taken permission for leave from the Addl. Deputy Commissioner, under whom at the relevant time he was performing his duties as Bodyguard, but in a hurry to attend his pregnant wife on the occasion of Chatth

Puja, though the petitioner went to meet Sergeant Major, for giving information regarding his leave but when the Sergeant Major could not be found in police line, he proceeded to his home. The fact that the petitioner has taken permission from the A.D.C, has come in the statement of A.D.C also. Hence, the absence for the petitioner cannot be said to be unauthorized leave or it cannot be said to be willful absence. It has further been submitted that from bare perusal of memo of charge itself, it is apparent that petitioner though deposited the pistol and cartridges in the box in barrack but he left his keys of the box in the barrack resulting into loss of arms and cartridges. Furthermore, the Investigating Officer in its report in Golmuri P.S. Case No. 381 of 2007 has also opined that in hurry to go home on the occasion of Chatth Puja the petitioner left the key on the box. Learned counsel for the petitioner further submitted that the petitioner at best can be attributed with negligence which resulted in loss of official arms and for this there is specific provision as contained in Rule 1108 of the 4 Jharkhand Police Manual, which provides that for the loss of arms and ammunition, adequate cost would be realised from the delinquent officer. Hence, in view of the provision as contained in Rule 826 read with Rule 1108 of the Police Manual, the respondents-authorities ought to have considered the case of the petitioner even on the ground of proportionality. In support of his submission, learned counsel for the petitioner relied upon the case rendered in the case of Digvijay Narayan Singh Vs. The State of Jharkhand & Ors passed in W.P. (S) No. 6214 of 2005, wherein this Court after considering the case laws laid down by Hon'ble Apex Court in catena of judgments quashed the impugned order of removal from services.

5. Controverting the averments made in the writ application, learned counsel for the respondents-State submitted that there is no procedural irregularity in culminating the impugned order of removal from services and it has been passed on the basis of report submitted by inquiry officer, which has been duly confirmed by the appellate authority. It has further been submitted that it is admitted case that due to gross negligence of the petitioner, he lost his arms and ammunition and further even the A.D.C directed the petitioner to obtain leave from the Sergeant Major, which the petitioner disobeyed and proceeded on leave, hence, such period of leave tentamounts to unauthorized leave. So far Rule 1108 of the Police Manual is concerned, it only says from whom the cost of the stolen/lost

arms is to be recovered, 5 hence, Rule 1108 of the Police Manual does not come to rescue the petitioner.

6. After having heard learned counsel for the respective parties at length and on perusal of the record, I am of the view that the petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements: (i).From perusal of the documents available on record, it appears that the petitioner proceeded on leave after getting oral permission from the A.D.C, with whom he was assigned to discharge his duties as Bodyguard, though admittedly, he was to take permission for leave from Sergeant Major, which, he did not. Furthermore, it is also admitted fact that he deposited his pistol and cartridges in the box in barrack and he left the key of the box in his barrack resulting into missing of pistol and cartridges. However, it is nowhere the case of the respondents that for any extraneous consideration the petitioner sold/lost the same. (ii).Much emphasis has been laid on Rule 826 read with Rule 1108 of the Police Manual, which is quoted herein below: Rule 826: Discrimination necessary in awarding punishments- The punishment awarded should be in conformity with the gravity of offence with which the officer is charged and offences involving moral turpitude shall be carefully discriminated from smaller wrong doings. It should also be borne in mind that the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding shall not be taken into account for determining the quantum of punishment. The objective of awarding punishment is firstly to keep a record of the wrong doings of the officer and secondly as a measure of correction to alert him to improve his work and conduct. Several punishments awarded in one lot such as during inspections which do not provide an opportunity to the delinquent officer to improve himself are not likely to be helpful. In any case, the punishment cannot be awarded without carefully considering the defence of the delinquent officer. Before issuing orders of minor punishment, it is necessary to apprise the delinquent of the substance of the charge against him and he should be given adequate opportunity for defence. After this has been ensured, the punishment can be awarded. However in the case of major punishments (see Rule

828) formal proceedings in P.M. Form no. 178 will have to be drawn Up. Rule 1108: Cost to be recovered in cases of carelessness:- The cost of arms, ammunition, etc. lost or damaged through carelessness shall be recovered from the person to blame and paid into the treasury to the credit of the Police Department, and the fact that this has been done shall be noted in the indents, the treasury receipt being filed in the Superintendent's office. From bare perusal of the aforesaid, it is apparent that the department itself has contemplated a situation, in which, due to carelessness on the part of delinquent, cost of the same shall be recovered from him and the disciplinary authority lost sight of this matter. 7 (iii). Be that as it may be, there is no gainsaying of the fact that due to negligence on the part of the petitioner, the pistol and cartridges were lost. Furthermore, in the case at hand, in the departmental proceeding, there is no procedural irregularity in culmination of passing of impugned order of removal from services. However, taking into consideration the gravity of misconduct, I find force in the submission of learned counsel for the petitioner that case of the petitioner is assailable on the ground of quantum of punishment as the same appears to be grossly disproportionate to the alleged misconduct, hence, the impugned orders, being hit by doctrine of proportionality, and the same are liable to be quashed and set aside. (iv). View of this Court gets fortified by the decision of Hon'ble Apex Court in the case of Ranjit Thakur Vs. Union of India & Ors as reported in (1987) 4 SCC611 wherein the Hon'ble Apex Court has held as under: Judicial review generally speaking, is not directed against a decision, but is directed against the decision-making process. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. 8 (v). Further the Hon'ble Apex Court in the case of B.C. Chaturvedi Vs. Union of India & Others as reported in (1995) 6 SCC749 has held that the

Court will not interfere with the order, unless the punishment order is one which shocks the conscience of the Court. In the case at hand, the petitioner has been able to make out a case for interference as the impugned punishment appears to be shockingly disproportionate to the proved charges.

7. In view of the reasons stated in the forgoing paragraphs and logical sequitur to the aforesaid reasons, the impugned order of removal from services dated 27.05.2010 as also the appellate order dated 15.03.2013 are hereby quashed and set aside and matter is remitted back to the disciplinary authority to pass fresh order on the quantum of punishment taking into consideration the observations made by this Court in the preceding paragraphs within a period of eight weeks from the date of receipt/production of copy of this order.

8. With the aforesaid observations and directions, the writ petition stands disposed of. (Pramath Patnaik, J.) Alankar/-

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