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Court : Jharkhand

Decided On : Jul-06-2007

Reported in : 2008(56)BLJR341; [2007(4)JCR154(Jhr)]

Judge : Narendra Nath Tiwari, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307, 325, 498A; [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Jurisdiction Case No. 2382 of 2000

Appellant : Arbind Kumar Upadhyay

Respondent : The State of Bihar and ors.

Advocate for Def. : H.K. Mehta, G.A.

Advocate for Pet/Ap. : Shailesh, Adv.

Disposition : Petition allowed

Judgement :

Narendra Nath Tiwari, J.

1. The writ petitioner, a Constable in B.M.P.3, was proceeded against departmentally for the alleged misconduct and was simultaneously put under suspension by order dated 17.11.1995.

2. A memorandum of charge was served containing charges against the petitioner. According to the charges, the petitioner attempted to kill his wife, Indu Devi. He thought that she is dead. He performed her last rite at his native village. But after sometime, his wife was found admitted in Ranchi Medical College & Hospital. An F.I.R. was lodged against the petitioner and a case was registered as Paliganj P.S. case no. 89 of 1995 under sections 498A, 307, 325 and 34 of the Indian Penal Code, an act and deed unbecoming of a police personnel, which amounts to serious indiscipline, breach of duty and misconduct.

3. The petitioner denied the charges in his written explanation. His defence was that he has neither assaulted his wife nor has performed her last rite, as alleged. According to the petitioner, some stranger had inflicted injuries on the persons of his wife and not the petitioner, which can be verified by examining her.

4. The written explanation, submitted by the petitioner, was not accepted and the petitioner was subjected to further enquiry. The criminal case lodged against the petitioner also proceeded in the court.

5. The departmental proceeding concluded without taking any statement of Indu Devi wife of the petitioner or taking any other evidence. The petitioner's defence in his written explanation was not accepted and it was held that the charges framed against the petitioner were established.

6. The Commandant, B.M.P.-3, Govindpur, Dhanbad concluded the proceeding by awarding punishment of dismissal and denying the salary of the period under suspension.

7. The petitioner preferred departmental appeal before the D.I.G., B.M.P. South Chotanagpur Division, Ranchi assailing the order of the disciplinary authority on several grounds. The petitioner, inter alia, took the ground that the finding arrived at is perverse being based on no evidence and the order has been passed in violation of the provisions of Police Manual as well as in violation of principles of natural justice.

8. The Appellate Authority without taking into consideration the grounds, taken in appeal, upheld the order of the Commandant and rejected the appeal.

9. The petitioner then preferred Memorial before the Director General-cum-Inspector General of Police, Bihar, Patna taking all the grounds, which were taken in appeal. The said Memorial was also rejected without considering the grounds taken therein.

10. In the meanwhile, the criminal case lodged against the petitioner, based on the identical facts and allegations, concluded in the court of Assistant Sessions Judge-II, Civil Court, Danapur, Patna. By judgment dated 6.8.1999, the learned Assistant Sessions Judge acquitted the petitioner of the charges under sections 498A, 307, 325 and 34 I.P.C.(Annexure-7). The following was the finding recorded by the learned Assistant Sessions Judge-II:

Thus in view of the discussions made above I find that the prosecution utterly failed to prove its case u/s. 498A, 307/34 and 325 I.P.C.

Therefore, the accused persons are held not guilty of offences u/s. 498A, 307/34 and 325 I.P.C. and I acquit them

In Paragraph-17 of the judgment, said learned Assistant Sessions Judge held that none of the witnesses have supported the case of the prosecution, rather all the seven witnesses (P.Ws.) have stated that Arbind Kumar Upadhyay (writ petitioner) and Indu Devi (his wife) are living together as husband and wife peacefully and Indu Devi (P.W.2) was never harassed, tortured and assaulted by the accused persons for dowry.

11. After his acquittal in the criminal case, the petitioner filed a representation before the Director General-cum-Inspector General of Police, Bihar, Patna praying for his reinstatement. The petitioner's wife also made similar prayer before the departmental authority. But no order was passed on their representations. The petitioner then preferred the instant writ petition and has prayed for quashing the order dated 31.1.1998 passed by the disciplinary authority-Commandant, B.M.P.-3, order dated 27.7.1998 passed by the D.I.G., B.M.P. in appeal and the order

dated 2.12.1999 passed by the Director General-cum-Inspector General of Police, Bihar, Patna in Memorial.

12. Mr. Shailesh, learned Counsel appearing on behalf of the petitioner, sought to assail the impugned order on the ground that the order of the disciplinary authority is not based on any evidence and the orders of the appellate and revisional authorities are mechanical and are vitiated on account of non-application of mind. Learned Counsel submitted that the disciplinary authority has come to the conclusion only on the basis of the allegation made against the petitioner, rejecting the grounds taken by the petitioner in his written explanation. Learned Counsel further submitted that when the charges are denied, the same were required to be proved by cogent evidence and the enquiry should have been conducted in accordance with the procedure laid down in Appendix-49 of the Police Manual.

13. The petitioner had denied the charges and requested the authorities to examine his wife as she is the most competent witness, but neither the petitioner's wife was examined nor any other witness was brought forth to prove the charges against the petitioner. The finding is based on the allegation without any basis thereof. The impugned order of disciplinary authority is, thus, unsustainable as the same is not based on any evidence and the same is also vitiated on account of non-observance of the principles of natural justice. The orders of the appellate authority and that of the Director General-cum-Inspector General of Police on the petitioner's Memorial are mere paraphrasing of the order of the disciplinary authority and the same are vitiated due to non-application of mind. Learned Counsel further submitted that in the criminal case, the prosecution utterly failed to establish the charges against the petitioner and he has been acquitted of the charges holding the case of no evidence.

14. The charges in the criminal case as well as in the departmental proceeding were grounded on the same facts and allegations and after clean acquittal of the petitioner of the charges by the learned Assistant Sessions Judge-II, the petitioner was entitled to be reinstated in the service. But the concerned authorities have not passed any order on the petitioner's request for reinstatement.

15. Mr. H.K. Mehta, learned Counsel appearing on behalf of the respondents, on the other hand, tried to support the impugned orders, but subsequently admitted that the order of the disciplinary authority is not based on any evidence and there is no legal ground to support the same. Learned Counsel conceded that the appellate authority as well as Director General-cum-Inspector General of Police while disposing of the petitioner's appeal and the Memorial respectively, committed the same error and that they have also not given due consideration on the grounds, taken by the petitioner and they have not properly applied their mind.

16. Learned Counsel for the respondents concluded his argument fairly admitting that the impugned orders are not sustainable, being violative of legal provisions as well as violative of principles of natural justice.

17. There is no difficulty in coming to the conclusion that the impugned orders passed by the departmental authorities are arbitrary, illegal and without jurisdiction. There has been gross violation of the principles of natural justice on the part of the said departmental authorities.

18. It is well settled that the finding of the disciplinary authority awarding punishment against the delinquent must be based on legal evidence. The basis of the finding cannot be mere assumption or hypothesis. Suspicion however strong cannot take place of proof. Reference may be made to the decision of the Apex Court in 'Narinder Mohan Arya v. United India Insurance Co. Ltd. and Anr. reported in : (2006)IILLJ806SC '. In the said decision, the Apex Court has discussed large number of the previous decisions and relied upon the decisions of 'State of Assam v. Mahendra Kumar Das' : [1971]1SCR87 ; 'Khem Chand v. Union of India' : (1959)ILLJ167SC ; 'K.L. Tripathi v. State Bank of India' : (1984)ILLJ2SC ; 'Central Bank of India Ltd. v. Prakash Chand Jain' (1969) 1 SC 983 and 'Kuldeep Singh v. Commr. of Police' : (1999)ILLJ604SC . It was concluded and held that the Writ Court in the matter of departmental proceeding has to keep in mind the following principles:

(1) The enquiry officer should not be permitted to collect any material from outside sources during the conduct of the enquiry. (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (3) Exercise of discretionary

power involve two elements- (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances.

19. The impugned order does not show that the Enquiry Officer has taken decision properly in accordance with the said principles of law. The impugned orders have been also passed even without complying with the principles of natural justice.

20. In the result, this writ petition is allowed. The impugned orders passed by the disciplinary authority, appellate authority and that of the Director General-cum-Inspector General of Police, Bihar, Patna on Memorial are, hereby, quashed.

21. Since the charges against the petitioner were the same as in the criminal case, based on the same facts situation and the prosecution has utterly failed to establish the charges, there is no point in remitting the matter to the disciplinary authority for proceeding against the petitioner afresh or for re-consideration and recording the decision. The charges were framed against the petitioner long back in the year 1995 and the petitioner has suffered the rigors of the proceeding awaiting justice till date.

22. For the reasons aforementioned, this Court directs the respondents to reinstate the petitioner forthwith. From the date of dismissal and till the date of reinstatement 50% of the salary of the petitioner shall be paid to him, which is equal to the lowest subsistence allowance, payable to the Government servant under suspension i.e. even in a case, when the Government servant is not on active duty. The arrears of 50% of the salary must be paid to the petitioner within a period of six weeks from the date of receipt/production of a copy of this order.

23. The parties shall bear their respective costs.

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