

Anil Kumar Singh Vs. State of Jharkhand and Ors

Anil Kumar Singh Vs. State of Jharkhand and Ors

SooperKanoon Citation : sooperkanoon.com/69447

Court : Jharkhand

Decided On : Mar-08-2016

Appellant : Anil Kumar Singh

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2963 of 2012
Anil Kumar Singh son of Late Bhairo Prasad Singh, resident of Ugara P.O.
Korambe P.S. Sneha, District-Lohardaga. Petitioner Versus 1. The State of
Jharkhand.

2. Deputy Inspector General of Police, South Chhotanagpur Region, Ranchi
having its office at Project Building Dhurwa P.O. & P.S.- Dhurwa, District- Ranchi.

3. The Superintendent of Police (Rural), Ranchi. Respondents --- CORAM :
HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : M/s Rajesh
Kumar & Amit Kumar, Advocates For the Respondents : Ms. Shruti Shreshtha,
J.C. to A.G. ----- CAV on 15.12.2015 Pronounced on 08/03/2016 Per Pramath
Patnaik, J.

In the instant writ application, the petitioner has inter-alia prayed for quashing of
Ranchi District Order No.4799 of 2010 passed by Superintendent of Police (Rural),
Ranchi (respondent no.3) in Departmental Proceeding No.90 of 2010 issued vide
memo dated 28.10.2010 pertaining to dismissal from services and appellate order

dated 23.02.2011 passed by respondent no.2 i.e. Deputy Inspector General of Police, South Chhotanagpur Region, Ranchi confirming the order of disciplinary authority by dismissing the appeal and for reinstatement of the petitioner in services with all consequential benefits.

2. The brief facts, as disclosed in the writ application, is that while being posted as Constable Ranchi, the petitioner took leave for 7 days on 15.10.2008 and the said leave was allowed by the concerned authority but during the leave period, the petitioner suffered mental illness and was treated at Kanke, Ranchi by Dr. Ashish Soy, and after recovering from illness, the 2 petitioner reported in Police Centre, Ranchi on 22.11.2009 i.e. after lapse of 395 days. The petitioner was served with a charge on 26.04.2010 with allegations on sanctioned leave and he was placed under suspension by the said order dated 26.04.2010 and on receipt of the charge the petitioner submitted his reply explaining the reasons for his absence from duty due to mental illness and prayed for revocation of the order of suspension. However, a departmental proceeding was initiated and inquiry officer was appointed, who conducted inquiry. After examining the witnesses, inquiry officer submitted his enquiry report finding him guilty of charges. After receipt of the inquiry report, respondent no.3 sent show cause to the petitioner on the proposed termination from services and the petitioner submitted his show cause explaining reasons for his absence. But to the utter misfortune the respondent no.3 terminated the petitioner from services vide order dated 28.10.2010 against which, the petitioner being aggrieved by the order preferred appeal but the appellate authority rejected the same vide order dated 23.02.2011. Being aggrieved by the order of the disciplinary authority dated 28.10.2010 by respondent no.3 and the order dated 23.02.2011 by respondent no.2, the petitioner left with no other alternative, efficacious and speedy remedy has invoked extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner has vehemently submitted that the impugned order of dismissal from services have been passed without observing the principle of natural justice and as also no opportunity has been given to the petitioner to cross-examine the witnesses. Moreover, the medical certificate submitted by the petitioner has not been properly appreciated by the disciplinary authority as well as

the appellate authority, therefore, the 3 impugned order of dismissal from services being affirmed by the appellate authority have been passed being actuated by arbitrariness, malafide and personal biasness. Learned counsel for the petitioner further submits that the impugned order of punishment of dismissal from services is to excessive, severe and harsh so as to shock the judicial conscience. Therefore, the impugned order of punishment of dismissal from services is liable to be interfered with. Learned counsel for the petitioner further submits that the order passed by the appellate authority is cryptic, non-speaking and non- reasoned order. In support of his contention, learned counsel for the petitioner submits that the petitioner's absence was not willful but due to unavoidable circumstances because of the mental illness. Learned counsel for the petitioner, in course of argument, has cited the decision reported in (2012) 3 SCC178 in the case of Krushnakant B. Parmar Vs. Union of India And Another at para 17. In the aforesaid decision, the Hon'ble Apex Court has been pleased to hold absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., 4. Counter-affidavit has been filed on behalf of respondents repelling the contentions made in the writ application. It has been inter-alia stated in the counter-affidavit that the petitioner while under deputation at Mesra O.P. (out post) as armed police, he had gone for leave since 15.10.2008 for seven days. He had to join on 23.10.2008, but he returned after a delay of 395 days on 22.11.2009 at Police Line, Ranchi and for this absenteeism vide Ranchi District Order his salary has been withheld. During the period of petitioner's 4 absence, he has been intimated at the address of his native village, but he did not return to his duties. After coming to know about the petitioner residing at Senha with his in-laws there, a notice was sent to him through Ugrah Narayan Singh, A.S.I. of the Senha Police Station (district-Lohardaga) to join his services vide Annexure-A to the counter-affidavit. After joining of the petitioner on 22.11.2009 his withheld salary has been released but it was decided to initiate a departmental proceeding against him. Pursuant to that very order vide Ranchi District, order no.90 of 2010 a departmental proceeding has been initiated against the petitioner. The inquiry officer conducted

the inquiry and found the petitioner guilty of not attending the services, in spite of repeated intimation given to him. Therefore, on the basis of inquiry report, respondent no.3 has passed the order of punishment vide Ranchi District Order no.4799/2010 dismissing the petitioner from services and also the appellate authority after going through the contention made by the petitioner has confirmed the order of disciplinary authority vide Annexure-C to the counter-affidavit.

5. Heard Mr. Rajesh Kumar, learned counsel appearing for the petitioner and Ms. Shruti Shreshtha, J.C to A.G, learned counsel appearing for the respondents at length and perused the records.

6. After hearing learned counsel for the respective parties at length and on perusal of the documents on records, the petitioner has not been able to make out a case for interference due to the following facts and reasons:- (i) In the instant case, for unauthorized absence of 395 days, a departmental proceeding was initiated and the inquiry officer was appointed. The Inquiry Officer submitted his report finding the petitioner guilty of the charges. The disciplinary authority basing on the report of the inquiry officer 5 have passed the order of punishment of dismissal from services which has been confirmed by the appellate authority. The said order do not warrant any interference, in view of the decisions of the Hon'ble Apex Court as reported in (2009) 8 SCC310 in the case of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another, at paragraph no. 15, which is quoted hereinbelow:

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 reappreciate 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... In the instant case, there is no procedural irregularities from the date of initiation of proceeding till its culmination, nor the proceeding is based on no evidence. Therefore, there is absolutely no scope for interference in the impugned order of punishment passed by the disciplinary as well as the appellate authority in exercise of judicial review under Article 226 of the Constitution of India. Therefore, findings recorded by the inquiry officer and consequent dismissal by the

disciplinary authority being affirmed by the appellate authority cannot be interfered with. (ii) So far as unauthorized absence of the petitioner for 395 days being in a disciplined force has been proved to be wilful by the inquiry officer. Unauthorized absence of employee as a misconduct cannot be put in straitjacket formula for imposition of punishment which depends on host of factors as has been held by the Apex Court as reported in (2014) 4 SCC108 in the case of Chennai Metropolitan Water Supply And Sewerage Board 6 And Others Vs. T. T. Murali Babu at paragraph no.32 which is quoted hereinbelow:

32. The learned counsel for the respondent has endeavoured hard to impress upon us that the respondent had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of habitual absenteeism is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorizedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate. (iii) In the case in hand, in view of proved unauthorized absence and misconduct committed by the petitioner, the power of judicial review cannot be applied and therefore, the fact finding given by two concurrent findings based upon the materials on record cannot be interfered with.

7. I find no reason to interfere with the impugned order of punishment dated 28.10.2010 passed by the respondent no.3 and the order dated 23.02.2011 appellate authority (respondent no.2) confirming the order of the disciplinary authority applying the aforesaid principle of Hon'ble Apex Court. As a result, the impugned order of punishment dated 28.10.2010 passed by the respondent no.3 and the order of appellate authority dated 23.02.2011 passed by the respondent no.2 do not warrant any interference by this Court.

8. Accordingly, the writ petition sans merit is dismissed. (Pramath Patnaik, J.)
RKM/- N.A.F.R.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com