

**Ajit Kumar Vs. Police**

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**Court :** Jharkhand

**Decided On :** May-12-2016

**Appellant :** Ajit Kumar

**Respondent :** Police

**Advocate for Pet/Ap. :** Mr. Manoj Tandon

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4675 of 2012  
----- Ajit Kumar S/o Late Bipin Bihari Sharma, resident of Village- Godsar, P.O & P.S.-Ghoshi, District-Jahanabad (Bihar) ... Petitioner Vs. 1.The State of Jharkhand through the Director General of Police, Governmetn of Jharkhand, having its office at Police Headquarter, P.O-Dhurwa, P.S.-Hatia, Town and District-Ranchi 2.The Deputy Inspector General of Police, South Chhotanagpur Range, Ranchi, P.O-G.P.O, P.S. Kotwali, Town and District-Ranchi. 3.Superintendent of Police (Rural), Ranchi, P.O-G.P.O, P.S. Kotwali, Town and District-Ranchi. 4.Superintendent of Police, Chatra, P.O., P.S. and Distrit-Chatra. ... Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : M/s Manoj Tandon, Shiv Shnkar Kumar, Kumari Rashmi & Micky Kumari, Advocates For the Respondents : Mr. Chanchal Jain, J.C to Sr. S.C. I ----- 08/ Dated:

12. h May, 2016 Per Pramath Patnaik, J.: Feeling aggrieved by the impugned orders dated 21.10.2010 passed by Superintendent of Police (Rural), Ranchi; order dated 15.11.2010 whereby the name of the petitioner has been struck off,

appellate order dated 14.03.2011 and revisional/memorial order dated 16.05.2012, pertaining to dismissal of the petitioner from services, the petitioner has prayed for quashing of the aforesaid orders and also prayed for reinstatement of the petitioner in services with all consequential benefits.

2. Bereft of unnecessary details, the facts as disclosed in the writ application, is that the petitioner was appointed as Constable in the year 1997. After joining, he continued to discharge his duties to the utmost satisfaction of his authorities. However, in the year 2006 due to ailments, he was advised by the doctors of RINPAS to undertake light duty and unarmed duty. But, due to ill luck of the petitioner on 12.06.2006 while the petitioner was on duty at Karra Police Station, it is alleged that the petitioner fired two rounds from his riffle in air and the report to this effect was given to Officer-in-Charge, Karra Police Station, basing on which, the petitioner was put under suspension vide order dated 27.06.2006. Thereafter, memo of charge was framed against the petitioner for the alleged offence for indiscipline and dereliction of duty and departmental proceeding was initiated. It is submitted that in the departmental proceeding witnesses were examined in absence of the petitioner. Thereafter, show cause notice was issued to the petitioner, without enclosing the enquiry report, to which, the petitioner replied stating therein that he was advised by the doctor for light duty and unarmed duty and further that the firing from the riffle was not intentional. Pursuant thereto the petitioner was dismissed from services vide order dated 21.10.2010. Being aggrieved, the petitioner preferred appeal and revision, which were also rejected.

3. Being aggrieved by the impugned orders of dismissal from services, 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.

4. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Chanchal Jain, J.C to Sr. S.C. I for the respondents.

5. Mr. Manoj Tandon, learned counsel for the petitioner submitted with vehemence that the impugned order dated 21.10.2010 passed by Superintendent of Police (Rural), Ranchi is totally without jurisdiction as on the date of dismissal, the

petitioner was posted as Constable in the district of Chatra, as such, the S.P. (Rural) had no control over the petitioner so as to entitle him to pass the impugned order. To substantiate his argument on this issue, learned counsel for the petitioner referred to a judgment rendered in the case of P rem Chand Ram Vs. State of Bihar & Ors as reported in 2000 (2) PLJR918 and also in the case of Rama Shankar Ram Vs. The State of Jharkhand & Ors as reported in 2010 (1) JLJR361.

6. Learned counsel for the petitioner further submits that contention of the petitioner that witnesses were examined behind the back of the petitioner, has not been controverted in the counter affidavit, therefore, argument advanced by learned counsel for the petitioner is acceptable on the ground of doctrine of non-traverse. Learned counsel for the petitioner further submits that in the disciplinary proceeding, there has been infraction of Rule 828 of the Police Manual read with Appendix 49 of the Jharkhand Police Manual and non-compliance of the alleged procedure has vitiated the entire proceeding. It has further been submitted that enquiry report has not been served to the petitioner at any stage of proceeding, which has caused prejudice to the petitioner. Learned counsel for the petitioner submitted since from the initiation of the proceeding till its culmination, there are serious infirmities, the impugned order passed by the disciplinary authorities, being confirmed by the appellate as well as by the revisional authority are not legally sustainable.

7. On the question of quantum of punishment, learned counsel for the petitioner submitted that the impugned order of punishment is grossly disproportionate to the alleged charges and the impugned punishment is not susceptible to judicial interference on the ground that doctrine of proportionality. 4 8. Reiterating the submissions made in the counter affidavit, learned counsel for the respondents has assiduously submitted that the Superintendent of Police (Rural), Ranchi has got valid jurisdiction to pass the impugned order of dismissal as at the relevant point of time when the cause of action has arisen, the petitioner was posted at Ranchi as such departmental proceeding was initiated, which culminated to dismissal of the petitioner from services. Learned counsel for the respondents further submitted that so far as contention of learned counsel for the petitioner that

non-supply of enquiry has vitiated the entire proceeding, the same has no leg to stand, as the petitioner/delinquent has failed to prove what prejudice has been caused due to non-supply of the enquiry report. In this regard, learned counsel for the State has referred to a decision rendered in the case of *Sarva Uttar Pradesh Gramin Bank Vs. Manoj Kumar Sinha* as reported in (2010) 3 SCC 556. Learned counsel for the respondents further submitted that considering the gravity of the charges, which amounts to serious indiscipline and dereliction of duty, the impugned punishment is quite proportionate to the proved misconduct. Therefore, there is no infirmity or illegality in the impugned order passed by the disciplinary authority, being confirmed by the appellate as well as by the revisional authority.

9. After hearing learned counsel for the respective parties at length and after bestowing my anxious consideration to the documents available on record, I am of the considered view that the petitioner has been able to make out a case for interference due to following facts, reasons and judicial pronouncements: (I). Admittedly, in the case at hand, the impugned order dated 21.10.2010 has been passed by the Superintendent of Police 5 (Rural), Ranchi-respondent no.

3. But, on the date of passing of the impugned order, the petitioner has been posted at Chatra district since 05.06.2009. Therefore, as per relevant rules of Police Manual, the Superintendent of Police, Chatra is the controlling and disciplinary authority and not the Superintendent of Police (Rural), Ranchi. View of this Court get fortified by the decision referred in the case of *Prem Chand Ram (Supra)*. On that score, the impugned order is not sustainable. (ii). So far as gravity of charge is concerned, of course there has been lapses and negligence on the part of the petitioner, which resulted in firing of the bullets, but, fortunately none was injured in the alleged incidence nor there has been any conclusive proof that it was a deliberate attempt on the part of the petitioner to fire bullets in the air. Though, the conduct of the petitioner cannot be countenanced in a disciplined force but taking into consideration the mental illness of the petitioner coupled with the procedural irregularity in culmination of the departmental proceeding as examination of the witnesses behind the back of the petitioner and further non-supply of the enquiry report, rendered the impugned order of punishment legally not sustainable, which is fit to be quashed and set aside. (iii). Moreover, the gravity

of the charges is not so grave so as to entail the extreme punishment of dismissal from services in the facts and circumstances of the present case.

10. As a logical sequiter to the aforesaid facts, reasons and judicial pronouncements, the impugned orders dated 21.10.2010 passed by Superintendent of Police (Rural), Ranchi; 15.11.2010 6 whereby the name of the petitioner has been struck off, appellate order dated 14.03.2011 and revisional/memorial order dated 16.05.2012 are hereby quashed and set aside and the petitioner is directed to be reinstated in services forthwith.

11. However, disposal of the writ petition shall not preclude the respondents to initiate a proceeding afresh from the stage of supply of enquiry report to the petitioner and in the event, the authorities are desirous of putting the disciplinary proceeding into motion, the same must be concluded as expeditiously as possible preferably within a period of six months from the date of initiation of such proceeding and take a decision afresh after adhering to the relevant rules/regulations and the observations made by this Court.

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

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