

Anuj Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : May-19-2016

Appellant : Anuj Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P.(S) No. 3634 of 2010
Anuj Kumar son of Late Baidyanath Singh, resident of village & P.O. - Kobil, P.S. - Islampur, District - Nalanda (Bihar). Petitioner -V e r s u s- 1. The State of Jharkhand.

2. The Director General of Police, Jharkhand, Ranchi.

3. The Inspector General of Police, J A P, Project Bhawan, Dhurwa, Ranchi.

4. The Deputy Inspector General of Police, J A P, Project Bhawan, Dhurwa, Ranchi.

5. The Commandant, JAP - 6, Jamshedpur Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - Mr. (Dr.) S. N. Pathak, Sr. Advocate and Mr. K. K. Bhatt, Advocate. For the Respondents : - Ms. Shruti Shrestha, J.C. to A.G. C.A.V. On : - 18/03/2016 Delivered On :

19. 05/2016 ... Per Pramath Patnaik, J.

Challenging the order passed by the disciplinary authority (Respondent No.

5) in departmental proceeding no. 45 of 2004 vide order dated 31.07.2008, relating to the Award of punishment of dismissal from services and being confirmed by the order passed by the appellate authority dated 15.12.2008, the instant writ application has been filed for quashing of the said orders and for reinstatement in service with consequential benefits.

2. Sans details, the facts as averred in the writ application, is that the petitioner was appointed as a Constable no. 35 in the year 1999. While, the petitioner, who was deputed and posted at Railway Police Station, Daltonganj, departmental proceeding No. 02 of 2008 was initiated against him on serving charge sheet vide memo dated 02.01.2008 and the petitioner participated in the said enquiry denying all the charges levelled against him. In the departmental enquiry, the petitioner stated that false allegation has been levelled against him at the instance of one Anil Kumar (constable no. 278), who assaulted the petitioner on 15.01.2007 due to which he became faint. The Enquiry Officer submitted his enquiry report vide Annexure-4 to the writ 2 application and thereafter, vide Annexure-5 dated 31.07.2008, the disciplinary authority passed the impugned order awarding punishment of dismissal from services. Being aggrieved by the order of the disciplinary authority, the petitioner preferred appeal before the appellate authority but the appellate authority has also rejected the appeal vide order dated 15.12.2008. Thereafter, the petitioner filed a revision dated 19.01.2009 vide Annexure-8 to the writ application, before the Director General of Police, Jharkhand, Ranchi, but till the filing of the writ application, no order was passed in the said revision. Left with no alternative, efficacious and speedy remedy, the petitioner has been constrained to approach this Court, invoking Article 226 of the Constitution of India for redressal of his grievances.

3. Heard Mr. (Dr.) S. N. Pathak, learned senior counsel for the petitioner and Ms. Shruti Shrestha, learned J.C. to A.G. appearing for the respondents.

4. Mr. (Dr.) S. N. Pathak, learned senior counsel for the petitioner during course of hearing has vehemently submitted that the Constable no. 278, Anil Kumar assaulted the petitioner due to which he became seriously injured and admitted to

hospital, as such, there was no occasion for the Respondent No. 5 to initiate departmental proceedings against the petitioner. Moreover, the departmental proceedings, which has been conducted, has been done without following the conditions of Rule 828 of the Bihar Police Manual. Learned senior counsel for the petitioner further submits that in the departmental proceeding, no presenting officer was appointed and the petitioner was not given opportunity of being heard and to adduce evidence and the material witnesses were not examined in presence of the petitioner. Learned senior counsel for the petitioner further submits that the impugned order of awarding punishment is excessive, harsh and do not commensurate to the charges levelled against the petitioner. Learned senior counsel for the petitioner further submits that the impugned order has been passed on conjectures and surmises without appreciating the facts. Even the department witnesses have clearly stated in their deposition that the petitioner was not in a drunken state and no medical examination was also conducted to prove that the petitioner was in a drunken state. During course of hearing, in order to buttress his submissions, learned senior counsel for the petitioner has referred to the decision of the Hon'ble Apex Court in the case of the Munna Lal- versus-Union of India and others reported in (2010) 15 SCC399 5. Ms. Shruti Shrestha, learned J.C. to A.G. appearing for the Respondent-State has reiterated the submissions made in the counter affidavit. Learned counsel for the respondent-State submits that the petitioner committed misconduct by consuming alcohol being a member of the disciplined force and also misbehaved with a lady, namely, Anita Kanwar and in the departmental proceeding, it was found correct and, as such, the petitioner was found guilty of the misconduct and accordingly, the disciplinary authority rightly awarded the punishment of dismissal from services and the same order has been confirmed in the appeal filed by the petitioner. Learned counsel for the respondent-State by referring to the supplementary counter affidavit of the Respondent No. 6 has submitted that the petitioner did not want to cross-examine the witnesses, as is evident from Annexure-F. Learned counsel for the respondent-State further refers to the counter affidavit of the Respondent No. 5 dated 10.03.2016, wherein it has been submitted that the D.G.P., Jharkhand, Ranchi after considering the materials available on record and other aspects of the matter, passed the final order dated 17.02.2011, wherein, the dismissal order

against the petitioner has been confirmed and the appeal memo has been dismissed as per Annexure-A to the said affidavit.

6. After hearing the learned counsel for the respective parties and having bestowed my anxious consideration to the documents on record, I am of the considered view that the impugned order of dismissal, passed by the disciplinary authority being affirmed by the appellate authority as well as the revisional authority do not call for any interference in view of the facts stated hereinbelow:- (i) As per the allegations/charge, the petitioner left his 4 duty on 15.01.2007 at 19:00 hrs. and while he was on deputation at Railway Police Station, Daltonganj, consumed wine and attempted to outrage the modesty of a lady, namely, Anita Kanwar and this was witnessed by Constable No. 278, Anil Kumar and that resulted in hot altercations and quarrel ensued. Thereafter, the matter has been enquired into and the petitioner has been found guilty of the charges and, therefore, the petitioner is guilty of a serious misconduct being a member of the disciplined force. The disciplinary authority basing on the report of the enquiry officer has passed the order of dismissal from services, which has been affirmed by the appellate as well as revisional authority. From the initiation of proceedings, till its culmination, there has been no procedural irregularity, nor the said proceedings is based on no evidence, therefore, the order passed by the disciplinary authority being affirmed by the appellate as well as revisional authority do not call for any interference. (ii) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied and moreover the fact finding given by the respondent no. 5 based on the material on record cannot be interfered with, as has been held by the Honble Apex Court in the case of State of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another reported in (2009) 8 SCC310 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 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 5 7. In that view of the matter and applying the aforesaid principle and ratio as laid down by the Hon'ble Apex Court Supra, I find no reason to interfere with the impugned orders. Viewed thus, the instant petition do not warrant any interference by this Court and the writ petition sans merit, is hereby dismissed. (Pramath Patnaik, J.) APK

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