

Arvind Kumar Singh Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Sep-23-2016

Appellant : Arvind Kumar Singh

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 107 of 2010
----- Arvind Kumar Singh, S/o Sri Tarkeshwar Singh, resident of Village-
Sabadalpur, P.S.-Makhdumpur, P.O-Makhdumpur, District- Jahanabad, Bihar ...
Petitioner Vs. 1.The State of Jharkhand 2.Director General-cum-I.G of Police,
Jharkhand, Ranchi. 3.Deputy Inspector General of Rail Police, Jharkhand, Ranchi.
4.Sup'dt. of Rail Police, Jamshedpur Respondents ----- CORAM: HONBLE
MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Diwakar
Upadhyay, Advocate For the Respondents : Mr. Chanchal Jain, J.C to A.A.G -----
11/ Dated:

23. d September, 2016 Per Pramath Patnaik, J.: In the instant writ application, the petitioner, has inter alia, prayed for quashing of the punishment order of dismissal dated 13.04.2000 passed by Superintendent of Rail Police, Jamshedpur in departmental proceeding No. 37/1998 on the basis of Criminal Case, Tatanagar GRPS Case No. 32/97, under Sections 307/302/379 of the Indian Penal Code and 25 of the Arms Act and also prayed for quashing order of Appellate Authority-D.I.G of Rail Police, Jharkhand dated 12.10.2009 and further prayed for reinstatement of the petitioner in services with continuity in service and back wages and also

consequential benefits.

2. The brief facts, as emanated from the writ application, in a nutshell is that the petitioner while continuing as constable at Tatanagar G.R.P.S on 20.03.1997, it is alleged that the petitioner took out rifle and cartridge from the magazine and opened fire on the then Officer-in-Charge of Tatanagar G.R.P.S, as a result of which he died, as it is alleged that the Officer-in-Charge did not allow him to proceed on leave granted earlier. For this a criminal case was instituted against him vide Tatanagar G.R.P.S Case No. 32/97 under 2 Sections 302/307/379 of the Indian Penal Code and under Section 25 and 27 of the Arms Act. It has been submitted that while the petitioner was in the jail custody, basing on the same and similar charge, a departmental proceeding no. 37/98 was initiated, in which, the allegation levelled against the petitioner was found proved by the enquiry officer. Basing on the enquiry report, the disciplinary authority imposed the punishment of dismissal from services vide order dated 13.04.2000, which is impugned in the writ application. Being dissatisfied, the petitioner preferred appeal before the appellate authority, which was dismissed vide order dated 12.10.2009, confirming the order passed by the disciplinary authority.

3. Being aggrieved by the impugned orders, 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. Learned counsel for the petitioner has vehemently submitted that the impugned order of punishment has been passed by the respondents in derogation of Rule 844 and 847 of the Police Manual and the entire departmental proceeding has been conducted behind the back of the petitioner and there has been breach of principles of natural justice, which has caused great prejudice to the petitioner rendering the impugned order of punishment unsustainable in the eye of law. The learned counsel for the petitioner further submits that the charges basing on which departmental proceeding was initiated, on the same charge a criminal case was instituted, in which, the petitioner has been honorably acquitted vide order dated 11.05.2005 in S.T. No. 211 of 2003. Therefore, the petitioner ought to have been

reinstated in services, in view of the honorable acquittal of the petitioner in criminal case.

5. Per contra, a counter affidavit has been filed by the respondents controverting the averments made in the writ application. Reiterating the submissions made in the counter affidavit, Mr. Chanchal Jain, J.C to A.A.G, assiduously submitted that from the initiation of departmental proceeding till its culmination, there has been absolutely no infirmity or procedural irregularity in conduction of departmental proceeding so as to warrant interference in the impugned order passed by the disciplinary authority and the order passed by the appellate authority. Learned counsel for the State further by referring paragraphs 11, 12, 13, 15, 18, 19, 20, 21 and 26 of the counter affidavit submits that there has been absolutely no laches or negligence on the part of the respondents- authorities to afford reasonable opportunity to the petitioner. It has further been stated that on perusal of Annexure F to the counter affidavit, it is evident that the petitioner surrendered in the court below on 16.05.2002, which clarifies the position that the petitioner was a absconder so the question of affording opportunity to the petitioner does not arise and since the proceeding was already concluded prior to the date of surrender on 13.04.2000, so the contention raised by the petitioner is absolutely misleading and uncalled for. During course of hearing learned counsel for the State has further referred to paragraph 7 of the reply to counter affidavit, wherein it has been averred that the petitioner, during the relevant period was at his native place taking legal recourse in the murder case. It has been submitted that the question of absconding remains since he was at the native place goes to show that the petitioner was not attending the office. 4 6. As against this, learned counsel for the petitioner submits that the fact as referred paragraph 11 to the rejoinder wherein he says that earlier the petitioner moved this Court by way of filing W.P. (S) No. 1023 of 2003, where he has been granted subsistence allowance for the period in question. Since he was granted subsistence allowance, hence, fact of his absconding gets demolished by assertion made in the aforesaid paragraphs.

7. Having heard learned counsel for the respective parties at length and on perusal of the records, I am of the considered view the petitioner has not been able to make out a case for interference due to following facts, reasons and

judicial pronouncements: (i).In the case at hand, the charges levelled against the petitioner appears to be very grave and the same has been proved in the departmental proceeding by the enquiry officer. In the disciplinary proceeding the copy of the enquiry report has duly been served upon the petitioner and furthermore prior to infliction of punishment second show cause notice has been served upon the petitioner. Hence, a full dressed enquiry was done before passing the impugned order of dismissal from services leaving no iota of doubt or debate regarding procedural irregularity. (ii).It is well settled position of law that the Court under Article 226 of the Constitution of India has got limited jurisdiction to interfere in the case where entire proceeding is based on no evidence or there has been no procedural irregularity. In the instant case, on perusal of the record it appears that there has been no procedural irregularity from the initiation of proceeding till its culmination so as to warrant interference by this Court. (iii).So far as the charges against the petitioner is concerned, it has been proved and basing on the findings recorded by the 5 enquiry officer, the disciplinary authority imposed the impugned punishment. Therefore, the proceeding initiated against the petitioner cannot be construed to be proceeding based on no evidence. In such view of the matter, this Court is not inclined to to interfere with the impugned order of punishment at Annexure 2 and Annexure 5 to the writ application. (iv).So far as contention of the petitioner that the petitioner has been acquitted in criminal case, it would be pertinent to note here that the departmental proceeding and criminal proceeding are quite distinct to each other and in the case of departmental proceeding, preponderance of probability is the paramount consideration to fasten guilt on the delinquent but in the case of criminal proceeding the yardstick is to prove beyond all reasonable doubt. Moreover, it is well settled proposition of law that acquittal in criminal appeal will not ipso facto entitle the petitioner for reinstatement in services. The Hon'ble Apex Court in its illuminative decision rendered in case of Deputy Inspector General of Police & Anr. Vs. S. Samuthiram as reported in (2013) 1 SCC598has thrown light on the subject. It would be appropriate to extract the relevant portion of the decision referred to above (supra) at paragraph 26 and 27: 26.As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement.

Reason is that the standard of proof s required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish 6 guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so. 27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right .Such provisions are absent in the Tamil Nadu Service Rules. On this score also, the case of the petitioner does not merit consideration by this Court.

8. In view of the aforesaid discussions and logical sequitur to the aforesaid reasons, the impugned order dated 13.04.2000 at Annexure 5 and appellate order dated 12.10.2009 at Annexure 2 do not call for interference by this Court. Accordingly, the writ petition, sans merit is dismissed. (Pramath Patnaik, J.)
Alankar/-